TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~490~~ 198

JOHN G. JENKINS AND ONE HUNDRED AND FORTY OTHER STOCKHOLDERS OF THE FIRST NATIONAL BANK OF BROOKLYN, PLAINTIFFS IN ERROR,

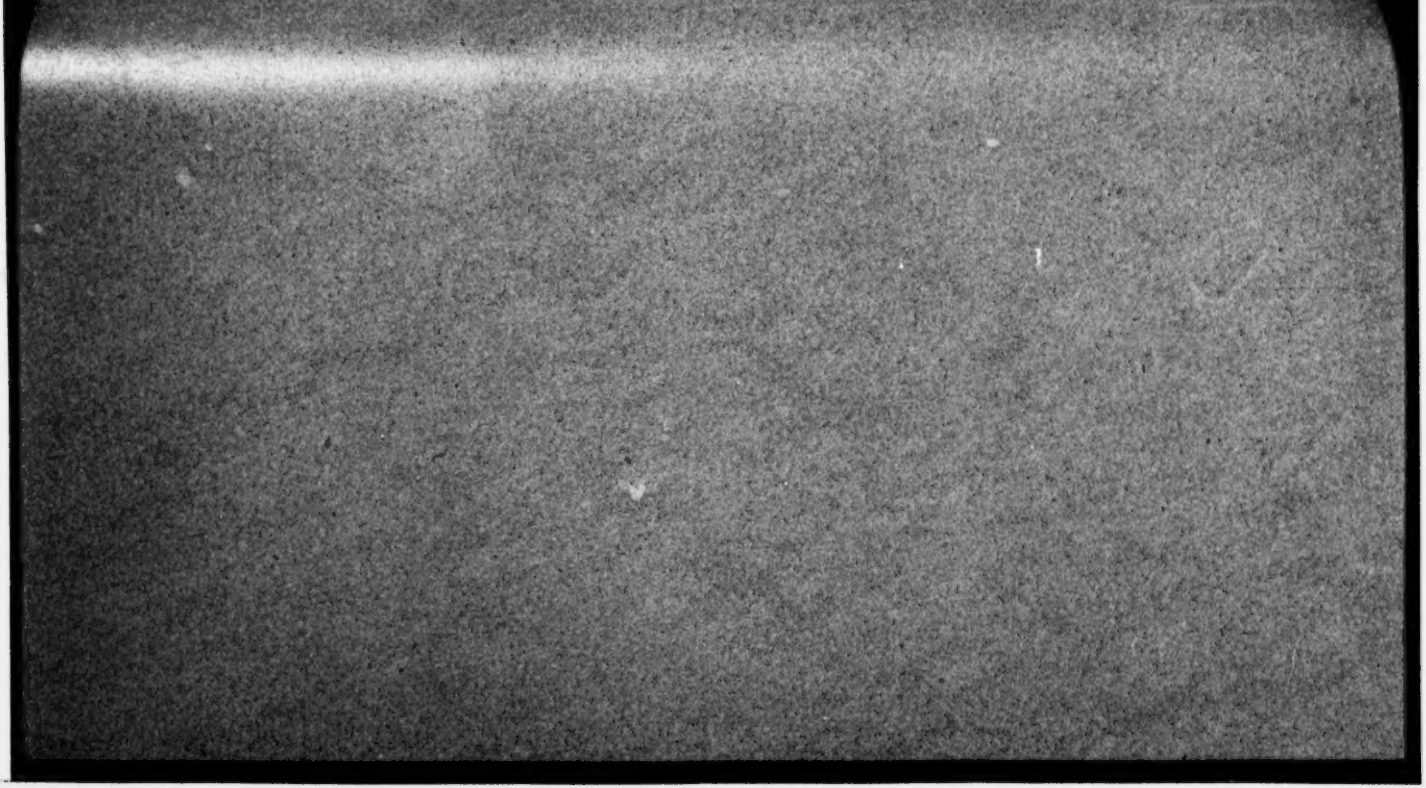
vs.

BARZILLAI G. NEFF, PRESIDENT, AND JOHN DRESCHER, JR., ET AL., ASSESSORS, CONSTITUTING THE BOARD OF ASSESSORS OF THE CITY OF BROOKLYN FOR THE TAXING YEAR 1897.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED NOVEMBER 24, 1900.

(17,975.)



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a

Filed Apr. 7, 1900.

Court of Appeals.

THE PEOPLE, &C., *ex Rel.*
In the Matter of the Application of JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Appellants,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Original Papers on Appeal.

Frank Harvey Field, attorney for appellants, 215 Montague street, borough of Brooklyn, city of New York, N. Y.

John Whalen, corporation counsel, attorney for respondents, Borough hall, Brooklyn, N. Y.

[Stamped:] N. Y. law department, office of corp'n counsel, Jun- 8, 1900. Rec'd by chief clerk.

Due and timely service of three copies of the within papers on appeal is hereby admitted.

Dated April 6th, 1900.

JOHN WHALEN,
Attorney for Def't.

Filed Apr. 7, 1900.

1 *Relators' Petition.*

Supreme Court, Kings County.

In the Matter of the Application of JOHN G. JENKINS and JOANNA Adams, Malvina Appleton, Cornelia A. Atwell, John M. Armstrong, John E. Backus, Fred. D. Backus, Hannah M. Barton, Reba C. Bamberger, Edwin Beers, Mary L. Beers, Elizabeth W. Beers, Francis B. Beers, George D. Betts, George Bell, Margaret Bell, John L. Billings, Estate of J. M. Brookfield, William Brookfield, W. A. Butler, Trustee; Daniel M. Burroughs, Juliet W. Camp, Thomas Cruttenden, Frederic Cromwell, Esther H. Cromwell, Charles W. Cooper, George W. Conselyea, John Cowen-
2 hoven, Executor; Frances E. Cross, Charles M. Davidson, Emma B. Day, Mary J. De Bevoise, John C. De Bevoise, John I. De Bevoise, Joanna W. De Bevoise, Estate of Elizabeth De Bevoise, Marshall S. Driggs, Charles D. Ditmas, Catherine Ditmas, John D. Ditmas, William G. Dunn, Antoinette L. Edwards, Julia L. Ellis, Mary Elizabeth Eddison, Phebe M. Ely, W. A. Field, R. W. Gage, William F. Garrison, William Green, A. Louise Greig, John Good, Thomas Guille, G. L. Hardy, Isaac Hamburger, Jane E. Hageman, F. T. Hewitt, Estelle W. Hills, Henry H. Hildreth, Edgar A. Hildreth, Alexina F. Hooker, William E. Horwill,

Estate of William H. Husted, Charles S. Husted, M. Katherine Husted, S. L. Husted, Jr., Anna J. Hunter, Hannah Hulst, Anna M. Irwin, Theodore F. Jackson, J. G. Jenkins, Executor; Frank Jenkins, Cornelia L. Jenkins, Mary S. Johnson, Martin Joost, George E. Kitching, George Kitching, Theodore B. Kolyer, Jane E. Kolyer, Louise B. W. Ladew, Edward R. Ladew, Joseph
3 Liebmann, Mary E. Lever, Maria L. Linington, Estate of C. H. Marshall, William Marshall, C. H. Marshall, Moses May, W. H. Male, Sarah Mead, Catherine V. Neefus, Catherine C O'Brien, Lowell M. Palmer, Catherine A. Peck, Alletta C. Rapelyea, Elizabeth M. Rapelyea, Georgiana J. Remsen, Charles H. Reynolds, Willard P. Reid, William L. Ricard, Julie Moore Rhodes, Alice W. Runyon, Rebecca H. M. Sawyer, Mary E. Sanford, John C. Schenck, Cornelia C. Schenck, Isaac Sherwood, John S. Siney, William Shipman, D. Springsteen, Mary E. Smith, Phebe F. Stoutenburgh, Maria Suydam, A. V. H. Stuyvesant, Lillie B. Taft, Caroline Talman, George A. Thayer, Hubert G. Taylor, Joseph J. Tompkins, Joseph E. Tompkins, Sarah J. Tompkins, Harriet E. Tuthill, Ida A. Van Alst, Sarah J. Vanderveer, George S. Van Wickel, J. Van Sicklen and P. Lott, Trustees; A. C. Washington, Estate of William Wall, Helen E. Wardell, Harriet M. T. Weaver, Williamsburgh City Fire Insurance Company, Gertrude C. Winthrop, Henry Wood, Mary Wood,
4 Sarah J. Wood, Peter Wyckoff, Cornelius Zabriskie, Julia A. Williams, Henry E. Williams, Mary A. Williams, and Sarah A. Williams, Being the Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Directed to Barzillai G. Neff and Others, Same Constituting the Board of Assessors of the City of Brooklyn, to Review an Assessment on Their Shares of Stock in said Bank.

To the supreme court of the State of New York:

John G. Jenkins, and 140 others, being the stockholders of the First National Bank of Brooklyn, hereinafter named, claiming to be aggrieved by an assessment on the shares of stock of said bank owned by them respectively, made by the board of assessors of the city of Brooklyn for the year 1897, respectfully present their petition to your honorable court and show on information and belief:

I. That at all times herein mentioned the First National Bank of Brooklyn was and still is a national bank or banking association created and existing under and by virtue of the laws of the United States, and said bank is located and has its office for the transaction of business in the thirteenth ward of the city of Brooklyn.

II. That at the times herein mentioned, Barzillai G. Neff, as president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth,
5 James McLeer, John McNamara, Thomas A. Moorehead, William H. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor and Benjamin W. Wilson, constituted the board of assessors of the city of Brooklyn, and as such were empowered within the provisions of the laws of the

State of New York and of the United States applicable thereto, and especially within the provisions of section 5219 of the United States Revised Statutes, and the provisions of the tax law, being chapter 908 of the Laws of 1896 of the State of New York, and in accordance with the facts, to fix the valuations of bank shares in said city for the purpose of assessment for taxation.

III. That at all times herein mentioned your petitioners are and were assessed upon the same roll and are affected in the same manner by the illegality, error and inequality alleged herein, and were and still are stockholders in said First National Bank of Brooklyn, owning the number of shares of the stock of said bank set opposite their respective names, as follows:

Name of stockholder.	No. of shares
Joanna Adams	1
Malvina Appleton	6
Cornelius A. Atwell	8
John M. Armstrong	6
John E. Backus	3
Fred. D. Backus	3
Hannah M. Barton	21
Reba C. Bamberger	10
Edwin Beers	60
Mary L. Beers	38
Elizabeth W. Beers	10
Francis B. Beers	10
6 George D. Betts	10
George Bell	27
Margaret Bell	12
John L. Billings	12
Estate, J. M. Brookfield	20
William Brookfield	10
W. A. Butler, trustee	12
Daniel M. Burroughs	2
Juliet W. Camp	4
Thomas Cruttenden	4
Frederic Cromwell	40
Esther H. Cromwell	40
Charles W. Cooper	47
George W. Conselyea	4
John Cowenhoven, ex'r	20
Frances E. Cross	70
Charles M. Davidson	15
Emma B. Day	4
Mary J. De Bevoise	6
John C. De Bevoise	10
John I. De Bevoise	5
Joanna W. De Bevoise	7
Estate, Elizabeth De Bevoise	3
Marshall S. Driggs	13

	Name of stockholder.	No. of shares.
	Charles D. Ditmas	2
	Catherine Ditmas	4
	John D. Ditmas	4
	William G. Dunn	6
	Antoinette L. Edwards	71
	Julia L. Ellis	71
	Mary Elizabeth Eddison	43
	Phebe M. Ely	10
	W. A. Field	10
	R. W. Gage	4
	William F. Garrison	16
7	William Green	5
	A. Louise Greig	15
	John Good	17
	Thomas Guille	30
	G. L. Hardy	14
	Isaac Hamburger	10
	Jane E. Hageman	2
	F. T. Hewitt	30
	Estelle W. Hills	2
	Henry H. Hildreth	6
	Edgar A. Hildreth	6
	Alexina F. Hooker	9
	William E. Horwill	11
	Estate, William H. Husted	30
	Charles S. Husted	60
	M. Catherine Husted	25
	S. L. Husted, Jr.	25
	Anna J. Hunter	18
	Hannah Hulst	2
	Anna M. Irwin	4
	Theodore F. Jackson	60
	John G. Jenkins	63
	John G. Jenkins, ex'r	16
	Frank Jenkins	10
	Cornelia L. Jenkins	14
	Mary S. Johnson	7
	Martin Joost	40
	George E. Kitching	186
	George Kitching	40
	Theodore B. Kolyer	2
	Jane E. Kolyer	2
	Louise B. W. Ladew	4
	Edward R. Ladew	10
	Joseph Liebmann	10
	Mary E. Lever	3
8	Maria L. Linington	4
	Estate, C. H. Marshall	12
	William Marshall	50

Name of stockholder.	No. of shares.
C. H. Marshall	12
Moses May	150
W. H. Male	10
Sarah Mead	2
Catherine V. Neefus	13
Catherine C. O'Brien	4
Lowell M. Palmer	10
Catharine A. Peck	1
Alletta M. Rapelyea	4
Elizabeth M. Rapelyea	5
Georgianna J. Remsen	4
Charles H. Reynolds	12
Willard P. Reid	41
William L. Ricard	5
Julie Moore Rhodes	8
Alice W. Runyon	13
Rebecca H. M. Sawyer	7
Mary E. Sanford	3
John C. Schenck	5
Cornelius C. Schenck	5
Isaac Sherwood	3
John S. Siney	13
William Shipman	12
D. Springsteen	3
Mary E. Smith	5
Phebe F. Stoutenburgh	14
Maria Suydam	3
A. V. H. Stuyvesant	33
Lillie B. Taft	10
Caroline Talman	8
George A. Thayer	18
Hubert G. Taylor	10
9 Joseph J. Tompkins	3
Joseph E. Tompkins	2
Sarah J. Tompkins	3
Harriet E. Tuthill	3
Ida A. Van Alst	14
Sarah J. Vanderveer	2
George S. Van Wickel	3
J. Van Sicklen and P. Lott, trustees	8
A. C. Washington	4
Estate, William Wall	4
Helen E. Wardwell	15
Harriet M. T. Weaver	100
Williamsburgh City Fire Insurance Co	168
Gertrude C. Winthrop	70
Henry Wood	30
Mary Wood	30
Sarah J. Wood	2

Name of stockholders.	No. of shares.
Peter Wyckoff	364
Cornelius Zabriskie	25
Julia A. Williams	14
Henry E. Williams	3
Mary A. Williams	18
Sarah A. Williams	1

IV. That heretofore and during the month of May, 1897, the First national bank, at the request of said board, made and filed with said board a statement giving them items of assets and liabilities of said First national bank, a true copy of which statement is annexed hereto marked "Schedule I," and is hereby made a part of this petition.

V. That thereafter and on or about the 29th day of May, 1897, said bank or banking association received from said board a notice that the shares of said bank or banking association had been
10 assessed for the year 1897 at three hundred and ninety-three dollars ($393) on each share. A true copy of said notice is annexed hereto marked "Schedule II," and is hereby made a part of this petition.

VI. That during the month of June, 1897, when the books called "Annual Record of the Assessed Valuation of Real and Personal Estate" were required to be kept open for examination and correction, your petitioners, claiming to be aggrieved by the proposed assessed valuation of their respective bank shares, which had been fixed by the board of assessors as aforesaid at the sum of three hundred and ninety-three dollars ($393) on each share thereof, applied on or about the 29th day of June, 1897, to the said board of assessors to have the same corrected and reduced. A true copy of the application of your petitioners to said board of assessors is annexed hereto marked "Schedule III," and is hereby made a part of this petition. That said application was made in due time and manner to the proper officers to correct said assessment.

VII. That pursuant to said application of your petitioners the said board of assessors notified your petitioners of a hearing before said board relative to said assessment on the 6th day of July, 1897. A true copy of the notice fixing said hearing is annexed hereto marked "Schedule IV," and is hereby made a part of this petition.

VIII. That thereafter and pursuant to the notice of said board, your petitioners appeared for a hearing before said board on said 6th day of July, 1897, by Mr. John G. Jenkins, one of your petitioners and president of said First National Bank of Brooklyn,
11 and Frank Harvey Field, Esq., their attorney, and on said hearing Mr. Jenkins was duly sworn and examined as to the value of the bank shares of your petitioners, and a true copy of his examination before said board is annexed hereto marked "Schedule V," and is hereby made a part of this petition.

IX. That the said board has not asked for any further statement or information from your petitioners or from any of the officers of

said bank or banking association, and the said board has not, since it proceeded to reconsider said assessment asked, demanded or taken any other testimony or secured any other knowledge or information in relation to the assessment of the said bank shares of your petitioners for the year 1897; and although the testimony taken and the statements made by your petitioners or by the officers of said First national bank in their behalf in the various schedules hereto annexed remained and still remains entirely uncontradicted, as in fact they did and do so remain, the said board thereupon proceeded to reconsider said assessment of said bank shares of your petitioners, and unlawfully and wrongfully fixed the same at three hundred and thirty-six dollars ($336) on each share thereof; and on or about July 30, 1897, they finally completed the assessment-rolls for 1897, and delivered them to the common council of the city of Brooklyn, and on the 31st day of July, 1897, said board of assessors gave public notice that said rolls had been delivered to said common council and would remain open for public inspection in charge of said common council for a period of fifteen days from said 31st day of July, 1897. Said notice was published in the Brooklyn Eagle, the Brooklyn Citizen, the Brooklyn Times and the Brooklyn Standard Union, newspapers published and circulated in the city of
12 Brooklyn, a true copy of which notice is hereto annexed, marked "Schedule VI," and is hereby made a part of this petition.

X. That it appears by said completed rolls that the assessment on the bank shares of your petitioners is fixed and confirmed at the sum of three hundred and thirty-six dollars ($336) on each share therefor for the year 1897.

XI. That your petitioners are informed and believe that the said board in arriving at said first-mentioned assessment of three hundred and ninety-three dollars ($393) on each share of said bank stock, added together the amount of the capital stock, the surplus and the undivided profits of the said First national bank, as shown in Schedule I hereto annexed, and from the total of said items they deducted the assessed value of the real estate of said First national bank, to wit, the sum of fifty thousand dollars ($50,000), and divided the remainder by three thousand, the number of shares of said bank stock; and that said second assessment of three hundred and thirty-six dollars ($336) fixed by said board on each share of your petitioners' stock, was arrived at by adding together the amount of the said capital, surplus and undivided profits, and subtracting from the total thereof the following items, to wit:

The assessed value of the real estate of said First national bank; four per cent. of the bank's loans and discounts; an amount equal to the amount of dividends paid by the banks for the current six months; amount paid or due from bank for current year's taxes.

And the remainder, after deducting said items, was divided
13 by three thousand, being the number of shares into which the capital of said First national bank was divided. That said deductions were uniformly made by said board from the assets of all banks in the city of Brooklyn.

XII. That your petitioners further show that on the 1st day of May, 1897, and on the 1st day of June, 1897, and at all other times when your petitioners were liable to assessment on their respective bank shares for taxation for the year 1897, said bank shares should have been wholly exempted from assessment for taxation, and the said assessment thereon was illegal on the ground that said board had not made the exemptions and deductions allowed by law from the value of the shares of said stock of your petitioners, and the same is unconstitutional, illegal, and void. That said assessment is erroneous by reason of overvaluation of the shares of stock of your petitioners, and the extent of such overvaluation is the total amount of said assessment, to wit, three hundred and thirty-six dollars ($336) on each of said shares. That said assessment is unequal in that said assessment has been made at a higher proportionate valuation than the assessment of other moneyed capital in the hands of individual citizens and corporations and personal and real property on the same roll by the same officers.

XIII. That your petitioners are or will be injured by said assessment of three hundred and thirty-six dollars ($336) on each of said shares.

XIV. That said assessment-rolls have been finally completed and delivered to the common council of the city of Brooklyn, and proceedings for the collection of the tax imposed by reason of
14 the aforesaid assessments are about to be instituted, and your petitioners show that the said assessment and the valuation on said shares for the purpose of taxation are illegal, erroneous, unequal, unconstitutional and void for the reasons hereinbefore stated and for the reasons hereinafter stated, to wit:

XV. That said board of assessors have not assessed, computed or estimated the value of said shares of stock of your petitioners according to the true and actual value thereof, and in accordance with the statements and information before said board.

XVI. That the said bank shares of your petitioners had not at any time in which said board could make an assessment thereon for the year 1897, any actual value over and above the lawful exemptions and deductions allowed by the laws of the United States and of the State of New York thereon.

XVII. That said board of assessors in assessing personal and real property in the city of Brooklyn, other than the bank shares of your petitioners, for the year 1897, adopted and acted on the rule that seventy per cent. only of the actual value of personal and real property within said city should be returned by them for taxation for the year 1897, and assessed said personal and real property at said seventy per cent., but that said board have failed to make a deduction of thirty per cent. from the value of the said shares of stock of your petitioners, as ascertained by them, and the assessment of your petitioners' shares of stock is therefore unequal for that reason, and is also in violation of the U. S. Revised Statutes.

15 XVIII. That said board of assessors have not deducted from the value of said shares the total investment of the capital of said bank or banking association invested in real estate.

XIX. That said board of assessors have not deducted from the value of said shares more than four per cent. from the total amount of the loans and discounts made by said bank. That there should have been deducted from the value of said shares a sum equal to not less than ten per cent. of the value of said loans and discounts, as shown by the statements and information before said board.

XX. That said board in making an allowance of four per cent. on the loans and discounts of the bank or banking association, did not include among the said loans and discounts that part of the bank's capital loaned on bonds and mortgages on real estate and bonds of railways and other corporations held by said bank.

XXI. The provisions of the tax law (chapter 908 of the Laws of 1896) in so far as they attempt to assess or tax the shares of stock of national banks, are in violation of the provisions of section 5219 of the United States Revised Statutes (section 124 of the national bank act), and are unconstitutional and illegal, and the acts and proceedings of said board of assessors thereunder in levying or attempting to levy an assessment for taxation on the said shares of stock of your petitioners, were illegal and void.

XXII. That the assessment and taxation made or attempted to be made on the shares of stock of your petitioners is made at a higher rate than is made or assessed upon other moneyed capital in
16 the hands of individual citizens of this State, and is therefore illegal and in violation of the U. S. Revised Statutes.

XXIII. That the assessment and taxation made or attempted to be made on the shares of stock of your petitioners is made at a higher rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State, and it is therefore illegal because it is in violation of the U. S. Revised Statutes and it is unequal in that the assessment has been made at a higher proportionate value than the assessment of other property on the same roll by the same officers, and the instances in which such inequality exist are as follows:

Atlantic Trust Company, New York city.
Brooklyn Trust Company, Brooklyn.
Central Trust Company, New York city.
Continental Trust Company, New York city.
Farmers' Loan and Trust Company, New York city.
Franklin Trust Company, Brooklyn.
Holland Trust Company, New York city.
Kings County Trust Company, Brooklyn.
Knickerbocker Trust Company, New York city.
Long Island Loan and Trust Company, Brooklyn.
Manhattan Trust Company, New York city.
Manufacturers' Trust Company, Brooklyn.
Mercantile Trust Company, New York city.
Metropolitan Trust Company, New York city.
Nassau Trust Company of the City of Brooklyn, Brooklyn.
New York Life Insurance and Trust Company, New York city.

17 New York Security and Trust Company, New York city.
People's Trust Company, Brooklyn.
Real Estate Trust Company, New York city.
The State Trust Company, New York city.
Title Guarantee and Trust Company, New York city.
Union Trust Company, New York city.
United States Mortgage and Trust Company, New York city.
United States Trust Company, New York city.
Washington Trust Company, New York city.
Edward F. Linton & Co., Brooklyn, N. Y.
J. & W. Seligman & Co., New York city.
J. Pierpont Morgan & Co., New York city, and all other private bankers, persons and corporations using moneyed capital in the cities of New York and Brooklyn.

J. G. Jenkins, Theodore F. Jackson, Royal C. Peabody, Ethan Allen Doty, Felix Campbell, Julian D. Fairchild, George H. Southard, C. T. Christensen, Silas B. Dutcher, William J. Coombs, Frank Bailey, A. D. Wheelock, Darwin R. James, Frank L. Sniffen, William H. Nichols, Lowell M. Palmer, John H. Ireland, D. M. Somers, Charles M. Pratt, John Gibb, George G. Reynolds, George W. Chauncey, William N. Dykman, Edwin Packard, John Winslow, Martin Joost, William Berri, William C. Wallace, Timothy L. Woodruff, Leonard Moody, Joseph V. White, George V. Brower, D. W. McWilliams, William Harkness, Charles S. Fairchild, Frederick R. Coudert, William L. Strong, Eugene G. Blackford, Horace J. Morse,
John E. Searles, William B. Davenport, Frederic A. Ward, Cor-
18 nelius N. Hoagland, Howard M. Smith, Clarence H. Kelsey,
William M. Ingraham, George W. Young, Charles H. Russell, all of whom are stockholders in trust companies in the cities of New York and Brooklyn, said trust companies use moneyed capital in competition with the said First National Bank of Brooklyn, and all other stockholders in banks and trust companies in said cities of Brooklyn and New York, and the extent of such inequality is the whole amount of said assessment, to wit, three hundred and thirty-six dollars ($336) on each share thereof.

XXIV. Said board of assessors have not deducted from the value of said shares a sum which bears the same proportion to said value as the assessed value of the real property bears to the capital stock.

XXV. That said board of assessors in fixing the value of the shares of stock of your petitioners, have not deducted from such value that part of said value which was invested in United States bonds, United States legal tenders, United States gold certificates, United States silver certificates, national bank notes, Brooklyn tax certificates, and the amount of the circulation of the said First national bank; notwithstanding the fact that said board did deduct similar property and assets in assessing other moneyed capital in the hands of individual citizens, trust companies, stockholders of trust companies, national and State banks, and private bankers in this State, and the same is in violation of the United States Revised Statutes.

XXVI. That said board of assessors did not deduct from the value

of said shares ten per cent. of the amount of the capital of said First national bank, notwithstanding the fact that said board
19 in assessing other moneyed capital in the hands of individual citizens of this State and in the hands of private bankers, and all other corporations in this State, they deducted ten per cent. of the amount of capital in each case and the same is therefore unequal and illegal and in violation of the provisions of the United States Revised Statutes.

XXVII. That the provisions of the tax law (chapter 908 of the Laws of 1896) are in violation of the provisions of section 5219 of the United States Revised Statutes (section 124 of the national bank act), and are unconstitutional for the reason that they provide that in making an assessment on the shares of stock of national banks there shall only be deducted from the value of such shares the assessed value of the real property of a national bank or banking association, whereas real property in the hands of individual citizens of this State is not taxed as moneyed capital; and that it does not provide for the deduction of ten per cent. of the amount of the capital of said banks or banking associations from the value of the shares of stock assessed.

XXVIII. The systematic and intentional valuation of all other moneyed capital and real estate in this State by the taxing officers at much less than its full value while shares of national banks are assessed at their full value, is in violation of the said provisions of the United States Revised Statutes, which prescribe the manner in which shares of stock of banks or banking associations are to be assessed and taxed by the States of the Union.

XXIX. That in assessing the stock of said bank, or bank-
20 ing association, every element of value which goes to make up the total value of the shares of the said First national bank that is derived from an asset not subject to State taxation in the hands of an individual citizen must be deducted from such valuation by the assessing officers in order to avoid a violation of said section 5219 of the United States Revised Statutes, when such taxing officers are making such deductions on moneyed capital in the hands of such individual citizens, and in this respect said board have not complied with the said statutes.

XXX. That the assessment on said shares of stock is illegal and void for the further reason that the examination and correction of said assessment was not made by the board of assessors of the city of Brooklyn during the month of June, as provided by sections 8 and 9 of title 10 of chapter 583 of the Laws of 1888 of the State of New York.

XXXI. That fifteen days have not elapsed since the completion and filing of the assessment-roll and the first posting or publication of the notice thereof on the 31st day of July, 1897, as required by law, and no other application for a writ of certiorari to review said assessment has been made by your petitioners, or any of them.

Wherefore your petitioner prays that a writ of certiorari may be issued and allowed by this honorable court directed to Barzillai G. Neff, president, and John Drescher, Jr., Louis Finkelmeier, George

W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor, and Benjamin
21 W. Wilson, assessors, constituting the board of assessors of the city of Brooklyn, commanding them to certify and return to this court all and singular their proceedings, decisions and actions in the premises, with the reasons therefor and the dates thereof, respectively, and all and singular the said assessment documents, records, memoranda and papers before them, relating thereto, touching and concerning the valuation or assessment of the said personal property, real estate and bank shares of your petitioners, or in anywise having respect thereto, and to return by what authority or claim of authority they have made said assessment or valuation; and also that the said assessors return all and singular their valuations or assessments for taxation, and the methods of arriving at said valuations or assessments for the year 1897, of the capital stock or personal property, real estate and bank shares, situate in the city of Brooklyn, or so much thereof as may be material; and that such evidence may be taken as the court may direct, or that a referee may be appointed to take such evidence and report the same to the court, and that the decisions and actions of the said assessors may be reviewed and corrected on the merits by this honorable court, and that the aforesaid assessment upon the shares of stock of said bank owned by your petitioners, if found to be illegal, may be stricken from the said assessment-roll, or if found to be erroneous or unequal, that the errors and inequalities may be reviewed and corrected by a reassessment of the property of your petitioners, or the correction of its assessment upon the roll in whole or in part, in such manner as shall be in accordance with the law, or as shall be necessary to make it conform to the valuations and assessments on other property
22 upon the same roll, and secure equality of assessment, and to conform said valuations and assessments to the provisions of the United States Revised Statutes.

And that your petitioner may have such other and further relief in the premises as may be just.

And your petitioner will ever pray, etc.

Dated Brooklyn, N. Y., August 12, 1897.

STOCKHOLDERS OF FIRST NATIONAL BANK OF BROOKLYN,
By W. ADDISON FIELD, *One of said Stockholders.*

PECK & FIELD,
Attorneys for Petitioners.

Office and P. O. address, 215 Montague street, Brooklyn, N. Y.

STATE OF NEW YORK, }
City of Brooklyn, County of Kings, } ss.:

W. Addison Field, being duly sworn, says that he is one of the petitioners herein; that the foregoing petition is true to his own

knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

W. ADDISON FIELD.

Sworn to before me this 12th day of August, A. D. 1897.
BENJ. K. FIELD,
Notary Public.

23 "SCHEDULE I."

Report of the condition of the First National Bank of the City of Brooklyn, at Brooklyn, in the State of New York, at the close of business on the 1st day of June, 1897, as required by section 23, chapter 908, Laws of 1896.

Resources.

Loans and discounts	$3,484,376 17
Stocks and bonds	1,346,696 42
Furniture and fixtures	
Banking-house	93,000 00
Other real estate	9,800 00
Amount due from banks	1,572,367 97
Assets not included under any of above heads	
Government bonds	200,825 00
Total	$6,707,065 56

Liabilities.

Capital stock paid in	$300,000 00
Surplus	900,000 00
Undivided profits less expense and taxes paid	53,226 13
Due depositors	5,177,360 41
Due banks	130,745 17
Liabilities not included under any of above heads	78,233 85
Circulating notes	67,500 00
	$6,707,065 56

Real Estate.

Description.	Estimated value.
Ward 13, block 9, lots 1 and 3	$93,000 00
24 Our interest in New York Clearing-house building	9,800 00

Assessments and Taxes.

Assessed valuation of capital stock	$393 per share.
Assessed valuation of real estate	$5,000 00
Taxes paid for preceding year on capital stock	
	On an assessment of $260 per share.
Taxes paid for preceding year on real estate	$1,273 27

Dividends.

Date and rate per centum of each dividend declared during the preceding year.

Date.	Rate per cent.	Total dividends.
July 1, 1896	8	$24,000 00
Jan. 1, 1897	8	24,000 00

Amount of authorized capital	$300,000
Number of shares	3,000
Par value of share	$100
Amount of capital employed during the year	All of it.
Estimated market value of stock	$390 last sale.

List of Shareholders.

Copy of list of names and residences of shareholders as they appear on the books of the bank on the 1st day of June, 1897.

Name.	Residence.	No. of shares.

As per list in your possession.

STATE OF NEW YORK, }
County of Kings, } *ss:*

I, W. A. Field, cashier of the First National Bank of Brooklyn, do solemnly swear that the above statement is true, and the schedules herein fully and correctly represent the true state of the several matters therein contained to the best of my knowledge and belief.

W. A. FIELD.

Sworn to and subscribed before me this 14th day of June, 1897.

BENJ. K. FIELD,
Notary Public.

"SCHEDULE II."

Department of assessment, room No. 20, Municipal Department building.

BROOKLYN, N. Y., *May* 29, 1897.

Mr. J. G. Jenkins, president of the First national bank.

SIR: You are hereby notified that the shares of your bank have been assessed for the year 1897 at $393 per share.

Respectfully yours,
B. G. NEFF,
President of the Department of Assessment.

Your attention is respectfully called to the annexed citation from the Laws of 1896, directing our mode of procedure in the premises. Section 26 of article II says:

"The assessors of every tax district shall within ten days after they have completed the assessment of the stock of a bank or bank-

ing association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment is required."

26

SCHEDULE III.

BROOKLYN, N. Y., *June* 29, 1897.

To the board of assessors of the city of Brooklyn, Municipal building, Brooklyn, N. Y.

GENTLEMEN: The undersigned, being the stockholders of the First National Bank of Brooklyn, and said First national bank are aggrieved by the assessed valuation of the shares of the said First National Bank of Brooklyn, and the grounds of objection thereto are that said assessment is illegal, erroneous by reason of overvaluation, and unequal, and on the further ground that said assessment is in violation of section 5219 of the United States Revised Statutes, in that the assessment is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this State, and said shareholders and said bank ask to be heard on their objections to said assessment.

Respectfully submitted.

FIRST NATIONAL BANK OF BROOKLYN,
JOANNA ADAMS,
MALVINA APPLETON,
CORNELIA A. ATWILL,
JOHN M. ARMSTRONG,
JOHN E. BACKUS,
FREDERICK D. BACKUS,
HANNAH M. BARTON,
REBA C. BAMBERGER,
EDWIN BEERS,
MARY L. BEERS,
ELIZABETH W. BEERS,
FRANCIS B. BEERS,

27

GEORGE D. BETTS,
GEORGE BELL,
MARGARET BELL,
JOHN L. BILLINGS,
ESTATE OF J. M. BROOKFIELD,
WILLIAM BROOKFIELD,
W. A. BUTLER, *Trustee*,
DANIEL M. BURROUGHS,
JULIET W. CAMP,
THOMAS CRUTTENDEN,
FREDERIC CROMWELL,
ESTHER H. CROMWELL,
CHARLES W. COOPER,
GEORGE W. CONSELYEA,
JOHN COWENHOVEN, *Ex'r*,

FRANCIS E. CROSS,
CHARLES M. DAVIDSON,
EMMA B. DAY,
MARY J. DE BEVOISE,
JOHN C. DE BEVOISE,
JOHN I. DE BEVOISE,
JOANNA W. DE BEVOISE,
ESTATE OF ELIZABETH DE BEVOISE,
MARSHALL S. DRIGGS,
CHARLES D. DITMAS,
CATHERINE DITMAS,
JOHN D. DITMAS,
WILLIAM G. DUNN,
ANTOINETTE L. EDWARDS,
JULIA L. ELLIS,
MARY ELIZABETH EDDISON,
PHEBE M. ELY,
W. A. FIELD,
R. W. GAGE,
WILLIAM F. GARRISON,
WILLIAM GREEN,
28 A. LOUISE GREIG,
JOHN GOOD,
THOMAS GUILLE,
G. L. HARDY,
ISAAC HAMBURGER,
JANE E. HAGEMAN,
F. T. HEWITT,
ESTELLE W. HILLS,
HENRY H. HILDRETH,
EDGAR A. HILDRETH,
MRS. ALEXINA F. HOOKER,
WILLIAM E. HORWILL,
ESTATE OF WILLIAM H. HUSTED,
CHARLES S. HUSTED,
M. CATHERINE HUSTED,
S. L. HUSTED, JR.,
ANNA J. HUNTER,
HANNAH HULST,
ANNA M. IRWIN,
THEODORE F. JACKSON,
J. G. JENKINS,
J. G. JENKINS, *Ex'r*,
FRANK JENKINS,
CORNELIUS L. JENKINS,
MARY S. JOHNSON,
MARTIN JOOST,
GEORGE E. KITCHING,
GEORGE KITCHING,
THEODORE B. COLYER,
JANE E. KOLYER,

LOUISE B. W. LADEW,
EDWARD R. LADEW,
JOSEPH LIEBMANN,
MARY E. LEVER,
MARIA L. LIVINGTON,
ESTATE OF C. H. MARSHALL,
29 WILLIAM MARSHALL,
C. H. MARSHALL,
MOSES MAY,
W. H. MALE,
SARAH MEAD,
CATHERINE V. NEEFUS,
CATHERINE C. O'BRIEN,
LOWELL M. PALMER,
CATHERINE A. PECK,
ALLETTTA C. RAPELYEA,
ELIZABETH M. RAPELYEA,
GEORGIANNA J. REMSEN,
CHARLES H. REYNOLDS,
WILLARD P. REID,
WILLIAM L. RICARD,
JULIE MOORE RHODES,
ALICE W. RUNYON,
REBECCA H. M. SAWYER,
MARY E. SANFORD,
JOHN E. SCHENCK,
CORNELIA C. SCHENCK,
ISAAC SHERWOOD,
JOHN S. SINEY,
WILLIAM SHIPMAN,
D. SPRINGSTEEN,
MARY E. SMITH,
PHEBE F. STOUTENBURGH,
MARIA SUYDAM,
A. V. H. STUYVESANT,
LILLIE B. TAFT,
CAROLINE TALMAN,
GEORGE A. THAYER,
HUBERT G. TAYLOR,
JOSEPH J. TOMPKINS,
JOSEPH E. TOMPKINS,
SARAH J. TOMPKINS,
30 HARRIET E. TUTHILL,
IDA A. VAN ALST,
SARAH J. VANDERVEER,
GEORGE S. VAN WICKEL,
J. VAN SICLEN, P. LOTT, *Trustees*,
A. C. WASHINGTON,
ESTATE OF WILLIAM WALL,
HELEN E. WARDWELL,
HARRIET M. T. WEAVER,

WILLIAMSBURGH CITY FIRE INSURANCE COMPANY,
GERTRUDE C. WINTHROP,
HENRY WOOD,
MARY WOOD,
SARAH J. WOOD,
PETER WYCKOFF,
CORNELIUS ZABRISKIE,
JULIA E. WILLIAMS,
HENRY E. WILLIAMS,
MARY A. WILLIAMS,
SARAH A. WILLIAMS,
Stockholders of said Bank,
By PECK & FIELD, *Their Attorneys.*

"SCHEDULE IV."

Department of assessment, room No. 20, Municipal Department building.

BROOKLYN, N. Y., *July* 2, 1897.

Mr. Peck & Field, attorneys.

GENTLEMEN: In accordance with your request in the matter
31 of a hearing before this board relative to the assessment of the First Nat'l Bank shares and the Ed. Elect'l Ill. Co. on its conduits in the various wards for the year 1897. I beg to notify you that the board has set Tuesday, July 6 inst., at 11.20 o'clock a. m., as the date and time fixed for such hearing.

Respectfully yours,
B. G. NEFF,
President of the Department of Assessment.

Tel. No. 1443, Brooklyn.

"SCHEDULE V."

In the Matter of the Application of JOHN G. JENKINS and Others, Shareholders of the First National Bank of Brooklyn, for a Correction and Reduction on the Assessment of the Shares of the Stock of the Bank.

JULY 6, 1897.

John G. Jenkins, Esq., represents the bank.
Messrs. Peck & Field appear for the petitioners.

Mr. FIELD: In addition to the broad general statements made in our application for a reduction I wish to file as a part of this record a number of points which I have written out. The assessment on the shares of stock of the First national bank was originally fixed at
$393 per share. Subsequent to a hearing before the board,
32 private in its nature, between your board and a committee from some of the city banks, or from all of the city banks, the assessment on the First National Bank stock was reduced to $336, which is the present amount, certain allowances being made in addition to those first made by the board.

My first point is that in valuing the assets of the bank a larger allowance than four per cent. should be made upon the bank's discount.

Mr. BRECKINRIDGE: How much do you ask?

Mr. FIELD: I should ask for at least ten per cent.; I think that is a very conservative allowance. In estimating the allowance to be made on a bank's discounts the present value of the discounts is what is to be considered. It is true of all banks, as the assessors undoubtedly know, that if all the banks' discounts were called in at maturity there would be a very great depreciation in the value of discounted paper—perhaps twenty-five per cent. would be a very conservative estimate.

Mr. BRECKINRIDGE: What we want is the ground that you claim your further deductions on. You claim an overvaluation of this property.

Mr. FIELD: If a bank continues its business, renewing its notes, carrying its customers along for periods of one year or perhaps five years, it can work out a large percentage of the value of discounted paper; but, my first point is that you should value paper at its present value, not at what you can work out of it if you continue business for five years more, because you will be taxing it again from year to year; the value that you are to fix now is the present value of banks' discounted paper, and we ask for a reduction of at least ten per cent. on the value.

33 My second point is in making the allowance on loans and discounts, the allowance should cover all loans, besides the loans and discounts contained in the item of loans and discounts on our printed report, which is the report to the United States Comptroller, and does not include loans on real estate and investments in the mortgage indebtedness of corporations, such as railroads; we think that if the allowance be made on loans it should cover all of those loans. We claim here broadly that the provision of the tax law, chapter 908 of the Laws of 1896, are in violation of the provisions of section 219 of the United States Revised Statutes, and are unconstitutional.

Mr. BRECKINRIDGE: We do not propose to shut off any proper thing here, but so far as I am concerned—and I think it is the sense of this board—the discussion of the constitutionality of the act is out of place. This board does not propose to declare any act unconstitutional so long as it remains an act.

Mr. FIELD: My next point is that the assessment and taxation is estimated at a greater rate than is made or assessed upon other capital in the hands of individuals of this State, it therefore contravenes both the tax law of this State and the United States Revised Statutes. I now wish to raise a point on the interpretation of the State tax laws.

JOHN G. JENKINS, being duly sworn, testifies as follows:

By Mr. BRECKINRIDGE:

Q. What was the capital stock of the First national bank?

A. $300,000.

34 Q. What is the surplus?

A. Nominally, $900,000.

Q. What do you mean by "nominally"?

A. By nominal, everything has got to be estimated at its par value; that produces a certain amount of surplus.

Q. And that surplus, then, is not made up of the properties of the bank at their actual value?

A. Well, as actual as we can make it.

Q. What were the undivided profits of this bank June last, was it $53,226?

A. The profits are stated here as of the 1st day of June at $53,226.13.

Q. Were you one of the committee connected with the banks in this city who had a conference during last month with the president and some others of this board?

A. I was.

Q. And at that time were propositions submitted to the president of this board by the committee?

A. There were.

Q. And were you one of the parties submitting that proposition?

A. I was one of that committee.

Q. And was that proposition satisfactory to you at that time?

A. It was not.

Q. Did you at that time state such dissatisfaction to the president?

A. I did, sir.

Q. And the remarks of Mr. Field here substantially contain the reasons, do they, why you are dissatisfied?

A. Well, I think not.

Q. Did you think that the amount of deduction allowed on account of loans and discounts was too small?

A. I did.

Q. Are there any other reasons why you thought the reports submitted or proposition submitted to the president of this board was not satisfactory to you?

A. I said that it was not satisfactory to the First national bank.

Q. Upon what grounds?

35 Mr. FIELD: It is understood that this shall not limit us in any proceedings that we may take for the reason that you are talking about an informal conference.

Mr. BRECKINRIDGE: Whether it was informal or formal wouldn't bind you one way or another. The record is as you make it by filing your application.

The WITNESS: On the ground that the rule that would apply to a New York city bank would not do at all for a Brooklyn bank.

Q. That was the principal reason?
A. Yes, sir.
Q. What did you consider the actual value of the loans and discounts of the First national bank as of June 1, 1897; did you state that from your knowledge of the bank affairs?
A. The loans and discounts are one item and stocks and bonds, which we thought should be embraced in loans—at least there is no stocks—it is all bonds, but we wanted the bonds put in with the loans and discounts.

By General McLEER:

Q. Was there anything said about it at this conference?
A. There was but one spokesman there, that was Mr. Nash who represented the New York bank.

By the PRESIDENT:

Q. Did Mr. Nash come as a representative of the Nassau bank or New York banks?
A. He came here as vice-president of the Nassau bank.
Q. How was this committee appointed?
A. By eight of the Long Island banks.
Q. And made up of the presidents of all the banks in Brooklyn?
A. Of Long Island.

By Mr. HOWE:

Q. With full power?
A. No, sir; they were to report, but they didn't report.

36 By Mr. BRECKINRIDGE:

Q. I asked you what was the actual value of your loans and discounts on June 1, 1897?
A. I can't tell that.
Q. What was the actual value of the bonds on that date?
A. I can only guess at that from those figures.
Q. You don't know?
A. I don't know.
Q. Can you furnish this board with that information?
A. Well, pretty nearly, I think.
Q. From the books of the bank?
A. From outside sources it will have to be gathered.
Q. When can you furnish that information?
A. Well, I could not furnish it complete unless we wind the bank up.
Q. Then it is something that can't be absolutely determined?
A. The stocks and bonds can be given approximately, but the discounts can never be given at any one time.
Q. Can you give the value of the loans and discounts as shown upon the bank's books?
A. I could do that; yes.
Q. Can you tell whether the figures that you find on that paper which I hand you state such value correctly?

A. No, sir; the loans are a fixed article, and there is very little in what is known as loans that can be lost, but the discounts in all our Brooklyn banks will average 65 per cent. of the total discount loan, if accommodation paper; that no man can fix until it is paid.

By Mr. FIELD:

Q. If all of your discounts could be called in at maturity as nearly as possible to the 1st of June, 1897, would they be worth, in your opinion, their full face value; would they realize, in your opinion, their full face value?

37 Mr. BRECKINRIDGE: This board would like to know what he deems as the actual value.

A. Now, Mr. Chairman, how will you have me answer that question, from history of Brooklyn or from what?

The PRESIDENT: We are not asking the history of Brooklyn, we are asking you for value.

Mr. FIELD: I asked if, in your opinion, they would be worth their value.

A. At a forced winding up I don't think they would bring 25 per cent. of their value.

Q. What has been your observation in the city of Brooklyn in the case of banks that have gone into voluntary liquidation and into forced liquidation?

A. There have been both kinds, four forced into liquidation, one gone into; the first that I recollect was the Central Bank of Brooklyn, located opposite city hall, paid 30 per cent. to its depositors; the next was the Farmers' and Citizens' bank, corner Broadway and First street, lost all its capital of $250,000, and five per cent. of its depositors; and then comes the Commercial bank—rather, next the Atlantic Bank of Brooklyn undertook to wind up and lost all of their capital and renewed their business at 50 per cent.; that was all lost, but the depositors got all the money; in the case of the Commercial bank it lost 40 per cent. of its capital; it moved down here—the stock was quoted at 126; it lost all that capital, and I think the depositors had had about 88 per cent. Here is the other case of voluntary liquidation—the Long Island was quoted at 145 and sold at about 120, as a speculation; it has paid all its depositors and its stock was sold at 145—it is doubtful if they get par; so I think if the First National Bank of Brooklyn was wound up

38 today by forced liquidation its discounts would not be paid by 25 per cent.

Q. You have some loans on bond and mortgage?

A. $43,000.

Q. You have some investments in other bonded indebtedness of railroads and other corporations?

A. Yes, sir; we have railroads and other corporations.

Q. What is the investment of the bank in its real estate, its banking building and premises?

A. The banking building and the lot cost us $93,000.

Q. Your bank owns a part interest in the clearing-house property on Cedar street, New York?

A. $9,800.

Q. And that share is held by a committee representing the clearing-house banks?

A. Yes, sir.

Q. Do trust companies in their methods of doing business in this city come into competition with your bank?

A. Direct competition.

Q. Do trust companies make loans on collateral securities?

A. They do.

Q. Do they make investments on bond and mortgage and in the bonded indebtedness of railroads and other corporations?

A. They do.

Q. Do they take deposits and pay them out in the same way that a bank does?

A. Exactly, yes.

Q. Do they deal in commercial paper?

A. They buy commercial paper.

Q. Though it may be called a sale, is the process of the purchase of commercial paper by trust companies the same in all respects as when they are taken by the bank?

A. The rate may vary, otherwise the process is the same.

Q. The question of rate would vary in the case of a bank?

A. A bank is supposed to discount for its customers only,
39 but in that case it would be 6 per cent.; but a trust company buying paper on the market would buy it at the best rate it could find.

Q. The only difference is that the trust company would make more money?

A. Yes, on an average it would.

Q. How is it with private banks; do they do the business in the same way that a national bank does?

A. We have but one private banker in Brooklyn, and he does the business the same as others.

Q. Who is that?

A. E. F. Linton & Co., of East New York.

Q. Private banks in New York city are conducted on the same general lines as national banks with respect to the use of its moneyed capital?

A. There seems to be no restriction upon the private banker in New York; they do anything they want to.

Q. How does he use his moneyed capital?

A. He buys paper generally known as shaving paper; buys bonds or anything else.

Q. Keeps deposits?

A. Yes.

Q. Checks them off?

A. Yes.

Q. Makes loans on collateral?

A. Yes.

Q. Has there been allowed in the making of the assessment on your bank ten per cent. on its capital stock?

A. I think not; I have no means of knowing.

Q. What would be the amount of a sum which bears the same proportion to the value of the shares of the bank as the assessed value of its real property bears to the capital stock?

A. These are the figures, $168,000.

By Mr. HOWE:

40 Q. Did I understand you to say that a rule that would apply well to all the banks of New York city wouldn't apply at all to Brooklyn?

A. I said so.

Q. You consider that we are obliged to act under the same law?

A. I don't consider that.

Q. Don't you think that the application of a principle which applies satisfactorily to all the other banks of Brooklyn ought to satisfy you?

A. That don't follow.

Q. Do you recognize that by the application of this principle which was considered as the correct one, the First national gets more than any other national bank in the city? That is the fact; that would seem pretty fair, wouldn't it?

A. The reason why we are particularly borne upon in this case I explained was that a bank in New York, represented by Mr. Nash—he had a bank with one million of capital, $1,200,000 surplus, and the tax he paid was $37,000, 1¾ per cent. upon his capital, while the assessment you would make us pay would be 10½ per cent. upon the capital.

Q. On the same basis of procedure wouldn't we assess Mr. Nash the same?

A. Yes, a bank in New York with a million dollars of capital, it gathers to itself $30,000, their tax last year was $37,000, while our tax under the rate you commanded last year was nearly $20,000.

Q. That was due to the same conditions that makes tax on real estate in Brooklyn higher?

A. No, sir.

Q. You think there should be some discrimination in favor of the Brooklyn banks?

A. Yes, sir.

By the PRESIDENT:

Q. How long have you been connected with the First national bank?

A. Forty-three years.

41 Q. What has been the loss on loans and discounts per annum while you were president of that bank?

A. That is a question I could not answer.

Q. Do you know how to keep books?

A. We keep them by double entry.

Q. You keep them and you know what the losses are yearly?

A. Mr. President, our directors meet on four different occasions in the year; they examine this thing and in their judgment they say whether certain things are chargeable to profit and loss or whether they will carry them along; we carry things along two or three years without any loss.

By Mr. BRECKINRIDGE:

Q. What has been the average losses on loans and discounts of this bank during the forty-three years that you have been its president?

A. I could not average without long calculation.

By the PRESIDENT:

Q. Mr. Field has been very persistent in his questions here in ascertaining what that bank would wind up with; we would like to know what it had lost in the forty-three years on loans and discounts.

A. That you couldn't tell without taking the books over six months to find out what is charged to profit and loss, that would require an examination of eighty-six items.

By Mr. BRECKINRIDGE:

Q. What side of profit and loss account is your balance on?

A. The balance is on the right side.

By the PRESIDENT:

Q. You can't tell what you have lost as president?

42 A. I can tell my losses; I am one owner and here are fifteen owners, and not in that whole time that I have been its president; I have been president of the bank since 1884.

By Mr. BRECKINRIDGE:

Q. I take it that this board would like the information requested by the president, whether it involves the examination of eighty-six semi-annual reports or 106; that is a practical question that appears to these assessors as being a very fair test of the loss per annum of loans and discounts; your books undoubtedly show what the bank has lost and we should like a statement of losses in each of the years since you have been president.

Mr. FIELD: At the same time I suppose it is the desire of the board to estimate the assets of the bank at its present value.

The PRESIDENT: We consider everything presented here.

General McLEER: The history, briefly, of this matter is that six years ago banks were assessed on their market value, less a few points, dropping ten points from the last quotation; this was not satisfactory to the bank presidents, and they protested against it, claiming that a better test was the book value; the board changed their method then; this method now is no longer satisfactory to the banks, and a meeting was held by all the presidents and that committee appointed a committee of five with instructions to wait upon the assessors and present a proposition, is that true?

Mr. JENKINS: That, as you understood it, was true, the other part didn't come out, that I objected to go on this body; that the percentage claimed by other banks being raised so little might be satisfactory to them, but it would not be satisfactory to the First
43 national. They said, "You are the very party to go on because you are the most aggrieved."

Q. You served as a member of that committee?

A. I served as a member of that committee.

Q. And the proposition made by Mr. Nash, chairman of the committee, as we understood it, was that from the gross value of the share stock there should be deducted—and we will call the gross the capital surplus—first, the real estate, then the 4 per cent. on the loans and discount and the six months' dividend and the taxes paid or to be paid?

A. Yes.

Q. It was either the president of the board or myself who asked this question, if this committee accept this proposition and recommend its adoption to the board of assessors do you understand that that will be satisfactory to all the banks in Brooklyn, and the answer to that question was, yes. I will ask you if at that time you made any objection?

A. At that very time, sir.

Q. Do you recollect it? The committee said this is a unanimous proposition made by the committee and if you will accept this proposition made by all the presidents of the banks of the city of Brooklyn it will be satisfactory. Some questions were asked why the dividend should be deducted, then some one said there are banks in Brooklyn where 50, 60, 70 or 80 per cent. of the share stock is sworn off; take a bank where there is 89 per cent. of the shares sworn off by the shareholders, shall we deduct the taxes in a case of this kind? The committee was in favor of deducting the whole. It doesn't make any difference to the bank whether the tax is paid by the shareholders or not, the bank pays the taxes—is not this practically so?

A. Practically so.

Q. What are the investments of the bank as of June 1, 1897,
44 in United States Government bonds?

A. $200,825.

Q. What are the investments of the bank as of June 1st, in Hecker-Jones, Jewell Milling Company, 6 per cent. bonds?

A. $80,000.

Q. What are the investments of the bank as of June 1st, in Ontario and Western?

A. $25,000.

Q. What are the investments of the bank as of June 1st, in the New York clearing-house?

A. $9,800.

Q. What is the bank's circulation?

A. $67,500.

Q. What are its investments in Brooklyn tax certificates?

A. $30,000.

Q. What is its investment in United States legal tenders?
A. $148,243.
Q. What amount have you on hand of United States national bank notes?
A. $13,450.
Q. What amount have you on hand of gold certificates of the United States?
A. $95,000.
Q. What amount have you on hand of silver certificates of the United States?
A. $152,000.
Q. What amount have you on hand of the city of Brooklyn bonds?
A. $12,000.
Q. What amount have you on hand of Jersey City bonds?
A. $13,000.
Q. What amount have you on hand of Louisiana State bonds?
A. $20,000.
Q. What amount have you on hand of the bonds of the city of Chicago?
A. $25,000.

SCHEDULE VI.

Department of assessment, room 20, Municipal Department building.

Assessors' Notice.

The board of assessors of the city of Brooklyn hereby give
45 public notice that they have finally completed the assessment-rolls of the real and personal property in the several wards of the said city for the year 1897; that they have delivered the said rolls to the common council of the city of Brooklyn on the 31st day of July, 1897, and that the said rolls will be open for inspection, in charge of the said common council, for a period of fifteen days from date hereof, in the office of the city clerk, in the city hall, of the said city of Brooklyn.

Brooklyn, July 31, 1897.

B. G. NEFF,
President of the Department of Assessment.

46 *Order for Writ of Certiorari.*

At a special term of the supreme court of the State of New York, held in and for the county of Kings, at the county court house, in the city of Brooklyn, on the thirteenth day of August, 1897.

Present: Hon. Walter Lloyd Smith, justice.

In the Matter of the Application of JOHN G. JENKINS, JOANNA ADAMS, Malvina Appleton, Cornelia A. Atwell, John M. Armstrong, John E. Backus, Fred. D. Backus, Hannah M. Barton, Reba C. Bamberger, Edwin Beers, Mary L. Beers, Elizabeth W. Beers, Francis B. Beers, George D. Betts, George Bell, Margaret Bell, John L. Billings, Estate of J. M. Brookfield, William Brookfield, W. A. Butler, trustee; Daniel M. Burroughs, Juliet W. Camp, Thomas Cruttenden, Frederic Cromwell, Esther H. Cromwell, Charles W. Cooper, George W. Conselyea, John Cowenhoven, Executor; Frances E. Cross, Charles M. Davidson, Emma B. Day, Mary J. De Bevoise, John C. De Bevoise, John I. De Bevoise, Joanna W. De Bevoise, Es-
47 tate of Elizabeth De Bevoise, Marshall S. Driggs, Charles D. Ditmas, Catherine Ditmas, John D. Ditmas, William G. Dunn, Antoinette L. Edwards, Julia L. Ellis, Mary Elizabeth Eddison, Phebe M. Ely, W. A. Field, R. W. Gage, William F. Garrison, William Green, A. Louise Greig, John Good, Thomas Guille, G. L. Hardy, Isaac Hamburger, Jane E. Hageman, F. T. Hewitt, Estelle W. Hills, Henry H. Hildreth, Edgar A. Hildreth, Alexina F. Hooker, William E. Horwill, Estate of William H. Husted, Charles S. Husted, M. Katherine Husted, S. L. Husted, Jr., Anna J. Hunter, Hannah Hulst, Anna M. Irwin, Theodore F. Jackson, J. G. Jenkins, Executor; Frank Jenkins, Cornelia L. Jenkins, Mary S. Johnson, Martin Joost, George E. Kitching, George Kitching, Theodore B. Kolyer, Jane E. Kolyer, Louise B. W. Ladew, Edward R. Ladew, Joseph Liebman, Mary E. Lever, Maria L. Linington, Estate of C. H. Marshall, William Marshall, C. H. Marshall, Moses May, W. H. Male, Sarah Mead, Catherine V. Neefus, Catherine C. O'Brien, Lowell M. Palmer, Catherine A.
48 Peck, Alletta C. Rapelyea, Elizabeth M. Rapelyea, Georgiana J. Remsen, Charles H. Reynolds, Willard P. Read, William L. Ricard, Julie Moore Rhodes, Alice W. Runyon, Rebecca H. M. Sawyer, Mary E. Sanford, John C. Schenck, Cornelia C. Schenck, Isaac Sherwood, John S. Siney, William Shipman, D. Springsteen, Mary E. Smith, Phebe F. Stoutenburgh, Mary Suydam, A. V. H. Stuyvesant, Lillie B. Taft, Caroline Talman, George A. Thayer, Hubert G. Taylor, Joseph J. Tompkins, Joseph E. Tompkins, Sarah J. Tompkins, Harriet E. Tuthill, Ida A. Van Alst, Sarah J. Vanderveer, George S. Van Wickel, J. Van Sicklen and P. Lott, Trustees; A. C. Washington, Estate of William Wall, Helen E. Wardwell, Harriet M. T. Weaver, Williamsburgh City Fire Insurance Company, Gertrude C. Winthrop, Henry Wood, Mary Wood, Sarah J. Wood, Peter Wyckoff, Cornelius Zabriskie, Julia A. Williams, Henry E. Williams, Mary A. Williams, and Sarah A. Williams, Being the Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Directed to Barzillai G. Neff and Others, Constituting
49 the Board of Assessors of the City of Brooklyn, to Review an Assessment on Their Shares of Stock in said Bank.

On reading and filing the annexed petition of John G. Jenkins and one hundred and forty others, being the stockholders of the

First National Bank of Brooklyn, verified the twelfth day of August, 1897, and on motion of Peck & Field, attorneys for the petitioners, it is.

Ordered, that a writ of certiorari be issued as prayed for in said petition, directed to Barzillai G. Neff, president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William A. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor and Benjamin W. Wilson, assessors, constituting the board of assessors of the city of Brooklyn, and that said writ be and the same is hereby made returnable at a special term of this court, to be held at the county court house, in the city of Brooklyn and county of Kings, on the first Monday of November, 1897, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and that said writ be allowed and signed and sealed by the clerk of this court, and that a copy of said return be served on the relators' attorneys on or before said first Monday of November, 1897.

Enter.

W. L. S.,
Justice Supreme Court.

Granted August 13, 1897.

JACOB WORTH, *Clerk.*

50 *Respondents' Return.*

New York Supreme Court, Kings County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of John G. Jenkins and Others, Stockholders of the First National Bank of Brooklyn, Relators,

against

BARZILLAI G. NEFF, President, and JOHN DRESCHER, JR., LOUIS Finkelmeier, George W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor, and Benjamin W. Wilson, Assessors, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

To the supreme court of the State of New York:

In pursuance of a writ of certiorari allowed herein by the Honorable Walter Lloyd Smith, a justice of the supreme court, on the 13th day of August, 1897, and directed to the above-named respondents, we, the said respondents, do hereby certify and return
51 all our proceedings, decisions and actions, with the dates thereof respectively, pertaining to the assessment upon the shares of stock of the First National Bank of Brooklyn, owned by the relators herein made by or had before us for the year 1897, and we do further certify and return all facts pertinent and material.

considered by us showing the grounds and authority for the said assessments upon the said shares of stock; and we do further certify and return that the original assessment-roll was delivered by us to the common council of the city of Brooklyn on or about the 31st day of July, 1897, and is no longer in our possession or under our control, and we therefore offer to produce for the inspection of the court a copy of so much of said roll as pertains to the said assessments.

The respondents further offer to produce before the court the various records kept by them showing the assessments as fixed by them by the 1st day of June, 1897, upon all real and personal property of the city of Brooklyn, including shares of stock of banks.

The respondents further allege and certify that during the month of June, 1897, and while the books kept by the respondents—called "Annual Record of the Assessed Valuation of Real and Personal Estate"—were open for examination and review, a committee, representing all the banks in the city of Brooklyn and the shareholders therein, made application to the respondents for a reduction of the assessments as fixed by June 1, 1897, upon the shares of stock of all the said banks.

The respondents further allege and certify that the said committee represented among others all the shareholders of the stock of the
52 First National Bank of Brooklyn, as respondents were informed and believe; that John G. Jenkins, one of the relators herein, was a member of the said committee, and was present when the said committee presented to the committee of the respondents a proposition for the reduction of said assessments, including the shares of the stock of the First National Bank of Brooklyn; that the said committee representing the said banks and shareholders thereof assured the committee of these respondents that if such proposition was accepted and reductions in the assessments made in accordance therewith, the assessments as then fixed would be satisfactory to all.

The respondents further certify and return that at that time the said John G. Jenkins was present and made no statement that the proposition submitted to the assessors was not satisfactory to him and those represented by him, but accepted the said proposition as a satisfactory settlement of the assessments in question.

The respondents further certify and return that subsequently and on or about the 12th day of July, 1897, the proposition made by the said committee was accepted by these respondents and the assessments upon the shares of stock of all the banks of the city of Brooklyn fixed accordingly.

That on the 19th day of June, 1897, a communication, a copy of which is returned herewith, was sent to Charles S. Young, Esq., one of the committee representing the banks of the city of Brooklyn and the shareholders therein, and stating that the proposition made had been accepted by the board of assessors, these respondents.

The respondents further certify and return that on the 29th
53 day of June, 1897, an application for correction of the assessments upon the shares of stock of the First National Bank of

Brooklyn, was made by the stockholders thereof, a copy of said application being annexed to the petition herein marked "Schedule 3," and therefore not returned herewith.

That subsequently and on or about the 6th day of July, 1897, a hearing was had before these respondents upon the said application, and John G. Jenkins, one of the relators, was sworn and examined; that a copy of the testimony taken at that time is annexed to the petition herein marked "Schedule 5," and therefore not returned herewith.

The respondents further allege and certify that prior to the 1st day of June, 1897, these respondents received from the cashier of the First national bank a statement purporting to contain the names of the stockholders thereof, and annexed hereto is a list of said stockholders with their respective holdings of stock.

The respondents further allege and certify that in determining the value of the shares of stock of the First National Bank of Brooklyn, prior to or by the 1st day of June, 1897, they considered the following items:

Capital stock	$300,000 00
Surplus	900,000 00
Undivided profits	30,303 54
Making a total of	1,230,303 54

and from such amount deducted the assessed value of the real estate owned by the First national bank, $50,000, leaving a balance of $1,180,303.54, which amount was divided by 3,000, the total number of shares of stock, to determine the value of each share; that
54 the value of each share of stock of the said bank was thereupon determined to be $393, and the assessment was fixed accordingly, notice thereof being sent to the president of the First National Bank of Brooklyn, John G. Jenkins, a copy of which notice is made a part of the petition herein marked "Schedule 2," and therefore not returned herewith.

The respondents further certify and return that, after considering the proposition made by the committee representing the banks of the city of Brooklyn and the shareholders therein, and the application for correction of the assessments upon the shares of stock of the First National Bank of Brooklyn made by the shareholders therein, they reduced the assessments upon the said stock from the sum of $393 per share to the sum of $336 per share; that the respondents found that the capital stock, surplus and undivided profits of the said bank amounted to $1,253,226, a value per share of $417.74; that a four per cent. allowance upon the loans and discounts of the said bank allowed by these respondents amounted per share to $46.48; that the amount of the assessed value of the real estate amounted per share to $19.93; that the value of the dividends paid for six months amounted per share to $8; that the value of the taxes paid for the preceding year amounted per share to $7.07; that the respondents, to determine the actual value of the share stock of the First National Bank of Brooklyn, deducted from the gross value per

share found by them to be $417.74, the sum of $81.48, and finally fixed the actual taxable value of the stock of the First National Bank of Brooklyn at $336 per share.

55 The respondents further certify and return that the assessments as thus fixed were in accordance with the proposition made by the committee hereinbefore mentioned, of which the relator John G. Jenkins was one, which proposition had been submitted and accepted by the said relator.

The respondents further certify and return that the assessments upon the shares of stock of all the national and State banks in the city of Brooklyn were fixed and determined in the same way and by the same method, and that the said assessments have been accepted by all the shareholders of stock of banks in the city of Brooklyn except the relators herein and the stockholders of the Kings County Bank of Brooklyn.

The respondents further certify and return that after the assessments upon the shares of stock of the said bank were fixed by them by June 1, 1897, applications for correction thereof were made by individual stockholders upon the ground that their general indebtedness should be deducted therefrom; that where these respondents were satisfied that such indebtedness actually existed and had not already been allowed, the applicants, or any one of them, in valuing personal property exclusive of bank shares, the said indebtedness was deducted from the said assessment of share stock of the said bank owned by the said applicants; that annexed hereto, marked "Schedule A," is a list of the stockholders of the First national bank, showing the shares owned by each and the deductions allowed on account of indebtedness and the assessments as finally determined.

The respondents further deny the allegations in paragraph marked "III," in the petition herein so far as the same alleges any illegality, error or inequality in the assessments upon the shares of stock of the First National Bank of Brooklyn owned by the relators herein.

56 The respondents further deny that the board of assessors did not ask for any further statement or information than that contained in the various schedules annexed to the petition herein, since the said board proceeded to reconsider the said assessments, and allege that on the 6th day of July, 1897, the respondents asked John G. Jenkins, who was then being examined, for a statement of losses upon loans and discounts in each of the years during which the witness had been president of the First national bank, and that such information or statement was never furnished to these respondents.

The respondents further deny the allegations contained in paragraph marked "IX," so far as the same allege or intend to allege that the board of assessors unlawfully and wrongfully fixed the assessments of the bank shares of the petitioners at $336 on each share thereof.

The respondents further allege that they have no knowledge or information sufficient to form a belief as to the allegations contained

in paragraph marked "XVIII" of the petition herein, and therefore deny the same.

The respondents further deny the allegations contained in paragraphs marked "XII," "XIII," "XV," "XVI," "XVII," "XXI," "XXII," "XXIII," "XXIV," "XXVI," "XXVII," "XXVIII," "XXIX," and "XXX" in the petition herein.

The respondents admit that the assessment-rolls have been finally completed and delivered to the common council of the city of Brooklyn, and proceedings for the collection of the taxes imposed for the aforesaid assessments are about to be instituted, but deny all the other allegations in paragraph marked "XIV" in the petition herein.

57 The respondents further deny that there should have been deducted from the shares of stock in question a sum equal to no less than 10 per cent. of the value of the loans and discounts of the said bank to determine actual value of the said shares of stock, and deny further that the statements and information before the board of assessors show that said deduction should have been made as alleged in paragraph marked "XIX" in the petition herein.

The respondents further deny that the said assessments, or any of them, are illegal for any reason whatsoever.

The respondents further deny that the said assessments, or any of them, are erroneous by reason of overvaluation in any amount whatsoever.

The respondents further deny that the said assessments, or any of them, are an overvaluation, as matter of fact, of the property assessed.

The respondents further deny that the said assessments have been made at a higher proportionate valuation than assessments upon other real and personal property upon the same roll.

The respondents further deny that in assessing other moneyed capital in the hands of individual citizens in this State and in the hands of private bankers they deducted from the value of the said properties 10 per cent. of the amount of the capital.

The respondents further deny that the relators are or will be injured by the said assessments or any of them.

The respondents further allege and certify that the following are true copies of their minutes pertaining to the assessments upon the shares of stock of the First National Bank of Brooklyn owned by the relators herein:

58 "ASSESSORS' OFFICE, SATURDAY, *September* 26, 1896.

The president announced the following committees for the year 1897:

On personal property, Assessors McLeer, Head, and the president."

"ASSESSORS' OFFICE, SATURDAY, *May* 29, 1897.

Assessor McLeer offered the following resolutions:

Resolved, That the share stock of the several banks located in this city be assessed for the tax of 1897 on all their capital, surplus, and

undivided profits, less the assessed valuation of the real estate owned by such banks respectively.

The resolution was adopted, Assessor Kurth voting in the negative."

"ASSESSORS' OFFICE, SATURDAY, *May* 29, 1897.

Assessor Head offered the following:

Resolved, That the action of the several committees of this board in fixing the valuation on both real estate and personal property in this city for the year 1897 and the amounts fixed by them be and the same are hereby approved by this board.

Adopted."

"*Tax Notice.*

Annual assessment notice.

To tax-payers:

The board of assessors of the city of Brooklyn, having completed the several assessment-rolls for the year 1896, fair copies for each ward can be seen and examined by any inhabitant of said city, or any other person interested in said assessment-rolls, from the 1st day to the 30th day of June, 1896, inclusive, from the hours of 8 59 a. m. to 3 p. m., except Saturdays, when the hours will be from 8 a. m. to 12 m., at the office of the board of assessors, room 20, Municipal Department building, and the said board of assessors will be in session during the time above stated to review their assessment-rolls on the application of any person or persons considering themselves aggrieved.

By order of the board of assessors, May 20, 1896.

B. G. NEFF, *President.*

CHARLES W. CHESHIRE,
Acting Secretary."

"ASSESSORS' OFFICE, TUESDAY, *June* 29, 1897.

Application received from the First National of Brooklyn for a reduction of the assessment for the year 1897 on its shares of stock."

"ASSESSORS' OFFICE, MONDAY, *July* 12, 1897.

Assessor McLeer, as committee on personal property, presented the following:

Resolved, That the assessed valuations of the share stock of the several banks in Brooklyn for the tax of 1897 be and the same are hereby corrected by fixing the same in the sums hereinafter named:

First National Bank of Brooklyn, $336.

Adopted."

"ASSESSORS' OFFICE, SATURDAY, *July* 31, 1897.

Assessor McLeer offered the following:

Resolved, That the sums set down opposite the various lot numbers and where no lot numbers appear, then opposite the name of the owner or corporation in the column of 1897 of the blotters or

annual records of the assessed valuations of real estate of the
60 several wards of this city in this department, be decided to be the full and true value; and also that the assessment-roll for 1897 contains a true statement of the aggregate amount of taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation at the full and true value thereof, according to our best judgment and belief.

Adopted."

Assessor McLœr moved that we do now proceed to sign the tax and assessment roll for the year 1897.

Agreed to.

At 11 o'clock the board, having signed the tax and assessment roll for the year 1897, reconvened, after which the board were duly sworn by Robert J. Woods, commissioner of deeds for Kings county, at the conclusion of which the board adjourned, subject to the call of the chair.

Department of assessment, room No. 20, Municipal Department building.

Assessors' Notice.

The board of assessors of the city of Brooklyn hereby give public notice that they have finally completed the assessment-rolls of the real and personal property in the several wards of the said city for the year 1896; and that they have delivered the said rolls to the common council of the city of Brooklyn on the 30th day of July, 1896, and that the said rolls will be open to public inspection in charge of the said common council for a period of fifteen days from date hereof, in the office of the city clerk in the city hall of the said city of Brooklyn.

Dated Brooklyn, July 31, 1896.

B. G. NEFF,
President of the Department of Assessment.

CHARLES W. CHESHIRE, *Secretary.*

61 CITY OF BROOKLYN, } ss.:
County of Kings, State of New York, }

We, the undersigned, George W. Head and Anson Squires, two of the assessors of the said city of Brooklyn, being severally duly sworn, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information, and that with the exception of those cases in which the value of the said real estate has been changed by reason of proofs produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and also that the said assessment-roll contains a full statement of the aggregate amount of the taxable personal estate of each and

every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief; and further that we have together personally examined, within the year past, each and every lot or parcel of land, house, building, or other accessible property contained in and set forth on the foregoing assessment-roll.

GEO. W. HEAD,
ANSON SQUIRES,
Assessors.

Subscribed and sworn to before me this 31st day of July, 1897.
ROB'T J. WOODS,
Commissioner of Deeds,
City of Brooklyn, Kings Co., N. Y.

62 CITY OF BROOKLYN, } ss:
County of Kings, State of New York, }

We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are the assessors, according to our best information, and that with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief.

R. E. L. HOWE,
JOHN McNAMARA,
BENJ. W. WILSON,
WM. J. TAYLOR,
EDWARD H. SCHLUETER,
JOHN DRESCHER, JR.,
AUGUSTUS KURTH,
LOUIS FINKELMEIER,
63 GEO. W. HEAD,
ANSON SQUIRES,
MICHAEL RYAN,
W. H. QUINN,
JACOB D. REMSEN,
ERNST J. KALTENBACH,
JAMES McLEER,
THOS. A. MOOREHEAD,
Assessors.

B. G. NEFF,
President Department of Assessment.

Subscribed and sworn to before me this 31st day of July, 1897.
ROB'T J. WOODS,
Com'r of Deeds, City of Brooklyn, Kings Co., N. Y.

Wherefore, respondents pray judgment, dismissing the writ of certiorari allowed herein, with costs.

"ASSESSORS' OFFICE, *June* 19, 1897.

Charles S. Young, Esq., president National City bank, Brooklyn, N. Y.

DEAR SIR: The proposition made by yourself and the associate members of the committee representing the banks of this city with reference to the assessed valuation of the share stock, has been accepted by this board.

(Signed) B. G. NEFF."

The People of the State of New York to Barzillai G. Neff, president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernst J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Flynn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor, and Benjamin W. Wilson, assessors, constituting the board of assessors of the city of Brooklyn, Greeting:

64 Whereas, we have been informed by the petition duly verified, of John G. Jenkins, and one hundred and forty others, owners of certain shares of stock of the First National Bank of Brooklyn, situate in the thirteenth ward of the city of Brooklyn, where said bank or banking association is located, that certain proceedings have been recently had by or before the board of assessors of the city of Brooklyn touching the assessment or taxation of the above-named bank shares of the petitioners for the year 1897, and the above-mentioned bank shares have been assessed for the purpose of taxation for the year 1897 against your petitioners at a valuation of $336 on each share thereof, which was entered in the annual record of the assessed valuations of real and personal estate of said city; but that the petitioners being aggrieved by the valuation aforesaid, made application to said board of assessors to have the same corrected and reduced, stating in writing their ground of objection thereto, and in the assessment-rolls thereafter prepared from the said books, the annual record, and delivered to the common council of the city of Brooklyn as required by law, the said assessors have assessed or pretended to assess the personal property aforesaid against your petitioners at a valuation of $336 on each share thereof; that said assessment upon the said valuation upon said bank shares is illegal on the ground stated in said petition. That it is erroneous by reason of overvaluation to the extent of $336, on each share thereof, being the whole amount of said assessment, and it is unequal in that the assessment was made at a higher proportionate valuation than the assessment of other property on the same roll by the same offi-
65 cers, the instances thereof being specified in said petition; and that it is unconstitutional, illegal and void for the further

reason that it is not made in accordance with the provisions of section 5219 of the United States Revised Statutes, and of the Constitution and laws of the United States. That in making up the value of said shares said board has included in the valuation of said shares assets not subject to taxation in said city of Brooklyn or assessment by said board, and said board did not deduct from the value of said shares certain portions of the value thereof that are exempt from taxation or assessment in said city or by said board, and that your said petitioners will be injured by said illegal, erroneous, unequal and unconstitutional assessment, and we being willing for certain cause to be certified of the proceedings, decisions and actions at, by and before you in the matter of the assessment for taxation for the year 1897, upon the aforesaid personal property of the said petitioners, and by you, the said board of assessors lately named.

Do hereby command you that all and singular the said decisions, proceedings, and actions in the premises, with the dates thereof respectively, together with the authority or claim of authority under which you have made such assessment or valuation, and also all and singular your valuations and assessments for taxation for the year 1897 of personal property, real property, and bank shares, situate in the said city of Brooklyn, or so much thereof as may be material you certify and send to the special term of our supreme court of the State of New York, at the county court house in said city of Brooklyn, on the first Monday of November, 1897, at the opening of the court on that day or as soon thereafter as
66 counsel can be heard, together with this writ, and serve a copy of your answer on the attorneys for the relator on or before said first Monday of November, 1897, to the end that your proceedings, decisions and actions in the matter of said assessment, and the said assessment of the aforesaid bank shares against each of your petitioners may be reviewed on the merits, and if found to be illegal that said assessment against each of your petitioners shall be stricken from the said assessment-roll; or if found to be erroneous or unequal, this court may order a reassessment of the bank shares of your petitioners or the correction of its assessment upon said bank shares upon the roll in whole or in part in such manner as shall be in accordance with law or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment, or shall make it conform to the provisions of the Constitution and laws of the United States, and especially of section 5219 of the United States Revised Statutes and that we may further cause to be done thereupon what is right and according to law ought to be done.

Witness, the Hon. Walter Lloyd Smith, one of the justices of the said supreme court for the second department, at the county court house, in the city of Brooklyn, on the thirteenth day of August, 1897.

By the court: JACOB WORTH, *Clerk.*

Allowed this 13th day of August, 1897.

WALTER LLOYD SMITH,
Justice Supreme Court.

[SEAL.]

67 *Shareholders of the First National Bank, Year* 1897.

No. of shares.	Assessed value of shares.	Name.	Residence.	Amount.	Deduction.	Corrected amount.
1	$336	Adams, Joanna	56 B'way, N. Y.	$336		
6		Appleton, Malvina	25 E. 30th St., N. Y.	2,016		
8		Atwill, Cornelia	Po'keepsie, N. Y.	2,688		
6		Armstrong, Jno.	Closter, N. J.	2,016		
3		Backus, Jno. E.	Newtown, N. Y.	1,008		
3		Backus, Fred. D.	Newtown, N. Y.	1,008		
21		Barton, Hannah M.	Irvington, N. Y.	7,056		
10		Bamberger, Reba C.	107 Taylor St.	3,360	$1,800	$1,560
60		Beers, Edwin	131 Remsen St.	20,160		
38		Beers, Mary L.	131 Remsen St.	12,768		
10		Beers, Eliz. W.	26 Broad St., N. Y.	3,360		
10	Sworn off.	Beers, Francis B.	200 Montague St.	3,360	3,360	
10		Betts, Geo. D.	587 Greene Av.	3,360		
25		Bell, Geo.	35 Pine St., N. Y.	9,072		
12		Bell, Marg't.	White Plains, N. Y.	4,032		
12		Billings, Jno. L.	Ellenville, N. Y.	4,032		
20		Brookfield, Est. J. M.	83 Fulton St., N. Y.	6,720		
10		Brookfield, Wm.	83 Fulton St., N. Y.	3,360		
12		Butler, W. A., Tr.	54 Wall St., N. Y.	4,032		
2		Burroughs, Dan'l M.	Elmhurst, N. Y.	672		
4		Camp, Juliet W.	Durham, Ct.	1,344		
4		Cruttenden, Thos.	180 Hewes St.	1,344		
47		Cooper, Chas. W.	New York	15,792		
4		Conselyea, Geo. W.	917 Bedford Ave.	1,344		
20		Cowenhoven, Jno., ex'r.	Richmond Hill.	6,720		
40		Cromwell, F.	32 Nassau St., N. Y.	13,440		
40	Sworn off.	Cromwell, Esther H.	32 Nassau St., N. Y.	13,440	13,440	
70		Cross, Frances E.	635 Clinton Av.	23,520		
15		Davidson, Chas. M.	Brooklyn	5,040		
4		Day, Emma B.	60 Worth St., N. Y.	1,344		
6		De Bevoise, Mary J.	Glendale	2,016		
10		De Bevoise, Jno. C.	Glendale	3,360		
5		De Bevoise, Jno. I.	Long Island City	1,680		
7		De Bevoise, Joanna	Blissville, N. Y.	2,352		
3		De Bevoise, Eliz., est.	Hollis, N. Y.	1,008		
13		Driggs, Marsh. S.	Brooklyn	4,368		
2		Ditmas, Chas. D.	Fairport, N. Y.	672		
4		Ditmas, Catherine	Jamaica	1,344		
4		Ditmas, John D.	Jamaica	1,344		
6		Dunn, Wm. G.	Columbus, Ohio	2,016		
71		Edwards, Antoinette L.	6 E. 48th St., N. Y.	23,856		
71		Ellis, Julia L.	Westchester, N. Y.	23,856		
43		Edelison, Mary E.	Irvington, N. Y.	14,448		
10	Sworn off.	Field, W. A.	Brooklyn	3,360	3,360	
4	Sworn off.	Gage, Royal W.	1159 Fulton St.	1,344	1,344	
68						
16	Sworn off.	Garrison, Wm. F.	566 Bedford Av.	5,376	5,376	
5		Green, Wm.	298 Bedford Av.	1,680		
15		Greig, Louise A.	Budds Lake, N. J.	5,040		
17		Good, John	Far Rockaway	5,712		
30		Guille, Thos.	99 Broadway	10,080		
14		Hardy, G. L.	153 Taylor St.	4,704		
10		Hamburger, Isaac	Brooklyn	3,360		
2		Hageman, Jane	Sea Cliff	672		
2		Hills, Estelle V.	Delaware, Ohio	672		
6		Hildreth, H. H.	Southampton, N. Y.	2,016		
6		Hildreth, Edgar A.	Southampton, N. Y.	2,016		
9		Hooker, Alexina F.	Selma, Ala.	3,024		
11		Horwill, Wm. E.	97 Broadway	3,696		
30		Husted, W. H., est.	L. I. Loan & Tr. Co.	10,080		
60		Husted, Chas. S.	157 Clinton Av.	20,160		
25		Husted, Kath. M.	157 Clinton Av.	8,400	8,400	
25	Sworn off.	Husted, S. L., Jr.	31 E. 24th St., N. Y.	8,400	5,000	1,048
18		Hunter, Anna J.	L. I. Loan & Tr. Co.	6,048		
2		Hulse, Hannah	Passaic B'dge, N. J.	672		
4		Irwin, Anna M.	48 Wall St., N. Y.	1,344		
60	Sworn off.	Jackson, Theo. F.	84 Broadway	20,160	20,160	
63	Sworn off.	Jenkins, J. G.	Brooklyn	21,168	21,168	
16		Jenkins, J. G., ex'r.	Brooklyn	5,376		
10		Jenkins, Frank	Brooklyn	3,360		
14		Jenkins, Cornelia L.	110 Cambridge Pl.	4,704		
7		Johnson, Mary S.	E. Orange, N. J.	2,355		
40	Sworn off.	Joost, Martin	26 Court St.	13,440	13,440	
186		Kitching, Geo. E.	Brooklyn	62,496		
40	Sworn off.	Kitching, Geo.	331 W. 71st St., N. Y.	13,440	13,440	
2		Kolyer, Theo. B.	River Vale, N. J.	672		

Shareholders of the First National Bank, Year 1897—Continued.

No. of shares.	Assessed value of shares.	Name.	Residence.	Amount.	Deduction.	Corrected amount.
2		Kolyer, Jane E.	159 Jerome St.	$672		
4		Ladew, Louise B. W.	28 Spruce St., N. Y.	1,344		
10		Ladew, Ed. R.	28 Spruce St., N. Y.	3,360		
10		Liebmann, Jos.	36 Forest St.	3,360		
3		Lever, Mary E.	Flushing	1,008		
4		Linington, Maria L.	New Lots Av.	1,344		
12		Marshall, C. H., est.	54 Wall St., N. Y.	4,032		
50		Marshall, Wm.	150 Nassau St.	16,800		
12		Marshall, C. H.	7 Nassau St.	4,032		
150	Sworn off.	May, Moses.	Brooklyn.	50,400	$50,400	
10	Sworn off.	Male, W. H.	Mt. Kisco, N. Y.	3,360	3,360	
2		Mead, Sarah	Passaic B'dge, N. J.	672		
13		Necfus, Cath. N.	110 Cambridge Pl.	4,368		
4		O'Brien, Cath. C.	69 So. Oxford St.	1,344		
10	Sworn off.	Palmer, Lowell M.	181 Front St, N. Y.	3,360	3,360	
1		Peck, Cath. A.	Cen. Safe Dep. Co.	336		
4		Rapelyea, Aletta C.	Hempstead	1,344		
5		Rapelyea, Eliz. M.	New Lots road	1,680		
69						
4		Remsen, Georgiana	Jamaica	1,344		
12	Sworn off.	Reynolds, C. H.	Brooklyn	4,032	4,032	
5		Ricard, Wm. L.	Pt. Richmond	1,680		
8		Rhodes, Julie M.	68 William St., N. Y.	2,688		
13	Sworn off.	Runyan, Alice W.	New Bruns., N. J.	4,368	4,368	
7		Sawyer, Rebecca H. M.	507 Bedford Av.	2,352		
3		Sanford, Mary E.	631 St. Marks Av.	1,008		
5		Schenck, Jno. C.	209 Barbey St.	1,680		
5		Schenck, Cornelia C.	205 Barbey St.	1,680		
3		Sherwood, Isaac	Manhasset, N. Y.	1,008		
13		Sincy, Jno. S.	243 So. 9th St.	4,368		
12		Shipman, Wm.	Stony Brook, N. Y.	4,032		
3		Springsteen, D.	Elmhurst, N. Y.	1,008		
5		Smith, Mary E.	New York	1,680		
14		Stoutenburgh, Phebe	238 E. 19th St. N. Y.	4,704		
3		Suydam, Maria	1155 Bushwick Av.	1,008		
33		Stuyvesant, A. V. H.	213 M'dis'n Av., N. Y.	11,088		
10		Taft, Lillie B.	Box 1116, N. Y.	3,360		
8		Talman, Caroline.	Peoples' bk.	2,688		
18		Thayer, Geo. A.	89 Maiden Lane.	6,048		
3		Tompkins, Jos. J.	Newtown, N. Y.	1,008		
2		Tompkins, Jos. E.	Hempstead	672		
3		Tompkins, Sarah J.	Hempstead	1,008		
3		Tuthill, Harriet E.	Flatbush	1,008		
14		Van Alst, Ida A.	Elmhurst, N. Y.	4,704		
2		Vanderveer, Sarah J.	Elmhurst, N. Y.	672		
3		Van Wickel, Geo. S.	Elmhurst, N. Y.	1,008		
8		Van Siclen, J., Tr.	Jamaica	2,688		
4		Washington, A. C.	3 E. 67th St., N. Y.	1,344		
15		Wardwell, Helen E.	Stamford, Ct	5,040		
30	Cancelled.	Webb, Eckford	10 W. 121st St., N. Y.			
100	Sworn off.	Weaver, Harriet M.	218 Jefferson Av.	33,600	33,600	
168		Wm'burgh City F. Ins. Co.	13 Broadway	56,448		
14		Williams, Julia A	Colchester, Ct.	4,704		
3		Williams, H'y E.	41 Spruce St., N. Y.	1,008		
18		Williams, Mary A	44 So. 8th St.	6,048		
4		Wall, Est. Wm.	3 E. 67th St., N. Y.	1,344		
1		Williams, Sarah A	Delaware, O.	336		
70		Winthrop, Gert. C.	N. Y. Life Ins. Co.	23,520		
30		Wood, Henry	Mt. Kisco, N. Y.	10,080		
30		Wood, Mary	New Bruns., N. J.	10,080		
2	Sworn off.	Wood, Sarah J.	New York	672	672	
364		Wyckoff, Peter	Brooklyn	122,304		
25		Zabriskie, Cornelius	Jersey City	8,400		
41	Sworn off.	Reid, Willard P.	307 Washington St.	13,776	13,776	
10	Sworn off.	Taylor, Hub. G.	451 Broadway	3,360	3,360	
10		Ely, Phebe M.	345 Halsey St.	3,360		
30	Sworn off.	Hewitt, F. T.	New York	10,080	10,080	
				181,192	61,488	

70 CITY OF BROOKLYN, } ss.:
County of Kings, }

B. G. Neff, being duly sworn, says that he is president of the board of assessors of the city of Brooklyn; that the foregoing return is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

B. G. NEFF.

Sworn to before me this 4th day of November, 1897.
WILLIAM P. DAWSON,
Commissioner of Deeds, City of Brooklyn.

SIR-: Please take notice that a return, of which the within is a copy, was this day filed at a special term of the supreme court, Brooklyn, N. Y.

Dated Brooklyn, November 4, 1897.

Yours, etc.,
JOSEPH A. BURR,
Corporation Counsel, City Hall, Brooklyn, N. Y.

To Peck & Field, Esqs., attorneys for pet'r.

71 *Order of Reference.*

At a special term of the supreme court, held at the county court house, in the borough of Brooklyn, on the 8th day of January, A. D. 1898.

Present: Hon. Samuel T. Maddox, justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of John G. Jenkins and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

The above-entitled proceeding having duly come on for hearing before this court, and it appearing that issues of fact are to be determined, and that testimony is necessary for the proper disposition of the matter, and application having been made to the court for the appointment of a referee to take such evidence and report the same to the court, with his findings of fact and conclusions of law thereon:

Now, on motion of Peck & Field, attorneys for the relators, William J. Carr, Esq., assistant corporation counsel of the city of New York, appearing and consenting thereto, it is

Ordered, that Frederick E. Crane, Esq., counselor-at-law of
72 the borough of Brooklyn, city of New York, be, and he hereby is, appointed referee herein to take the evidence of the parties hereto upon the issues raised by the petition of the relators, and the return of the respondents herein to the writ of certi-

orari heretofore issued out of this court in the above-entitled proceeding, and that said referee report the same to this court, with his findings of fact and conclusions of law with all convenient speed.

Enter.

S. T. M., *J. S. C.*

Granted Jan. 8, 1898.

WILLIAM P. WUEST, *Clerk.*

Please take notice that an order, of which the within is a copy, was this day duly entered in the office of the clerk of the county of Kings.

Dated New York, Jan. 10, 1898.

Yours, etc.,

PECK & FIELD,
Attorneys for Relators.

To John Whalen, Esq., attorney for respondents.

73 *Relators' Proposed Findings of Fact and Conclusions of Law.*

Supreme Court, Kings County.

JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Defendants.

The relators submit the annexed proposed findings of fact which they deem established by the evidence herein, and of the rulings upon questions of law, which they desire made.

PECK & FIELD,
Attorneys for Relators, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

To Frederick E. Crane, Esq., referee.

74 Supreme Court, Kings County.

JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Defendants.

Proposed Findings of Fact.

I. That at all times herein mentioned the First National Bank of Brooklyn was and still is a national bank or banking association created and existing under and by virtue of the act of Congress known as the "national bank act," with the amendments thereto, and said bank is located and has its office for the transaction of business in the thirteenth ward of the borough (late city) of Brooklyn.

II. That at the times herein mentioned Barzillai G. Neff, as president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor and Benjamin W. Wilson constituted the board of assessors of the city of Brooklyn, and as such it was their duty to fix the valuations of all property in said city for the purpose of assessment for taxation.

Found. F. E. C. 75

III. That at all times herein mentioned the relators were and still are stockholders in said First National Bank of Brooklyn, owning the number of shares of the stock of said bank set opposite their respective names, as follows:

Name of stockholder.	No. of shares.
Joanna Adams	1
Malvina Appleton	6
Cornelius A. Atwell	8
John M. Armstrong	6
John E. Backus	3
Fred. D. Backus	3
Hannah M. Barton	21
Reba C. Bamberger	10
Edwin Beers	60
Mary L. Beers	38
Elizabeth W. Beers	10
Francis B. Beers	10
George D. Betts	10
George Bell	27
Margaret Bell	12
John L. Billings	12
Estate, J. M. Brookfield	20
William Brookfield	10
W. A. Butler, trustee	12
Daniel M. Burroughs	2
Juliet W. Camp	4
Thomas Cruttenden	4
Frederic Cromwell	40
Esther H. Cromwell	40
Charles W. Cooper	47
George W. Conselyea	4
John Cowenhoven, ex'r	20
Frances E. Cross	70
Charles M. Davidson	15
Emma B. Day	4
76 Mary J. De Bevoise	6
John C. De Bevoise	10
John I. De Bevoise	5
Joanna W. De Bevoise	7

Name of stockholder.	No. of shares.
Estate, Elizabeth De Bevoise	3
Marshall S. Driggs	13
Charles D. Ditmas	2
Catherine Ditmas	4
John D. Ditmas	4
John D. Dunn	6
Antoinette L. Edwards	71
Julia L. Ellis	71
Mary Elizabeth Eddison	43
Phebe M. Ely	10
W. A. Field	10
R. W. Gage	4
William F. Garrison	16
William Green	5
A. Louise Greig	15
John Good	17
Thomas Guille	30
G. L. Hardy	14
Isaac Hamburger	10
Jane E. Hageman	2
F. T. Hewitt	30
Estelle W. Hills	2
Henry H. Hildreth	6
Edgar A. Hildreth	6
Alexina F. Hooker	9
William E. Horwill	11
Estate, William H. Husted	30
Charles S. Husted	60
M. Catherine Husted	25
S. L. Husted, Jr.	25
Anna J. Hunter	18
Hannah Hulst	2
77 Anna M. Irwin	4
Theodore F. Jackson	60
John G. Jenkins	63
John G. Jenkins, ex'r	16
Frank Jenkins	10
Cornelia L. Jenkins	14
Mary S. Johnson	7
Martin Joost	40
George E. Kitching	186
George Kitching	40
Theodore B. Kolyer	2
Jane E. Kolyer	2
Louise B. W. Ladew	4
Edward R. Ladew	10
Joseph Liebmann	10
Mary E. Lever	3
Maria L. Linington	4

Name of stockholder.	No. of shares.
Estate, C. H. Marshall	12
William Marshall	50
C. H. Marshall	12
Moses May	150
W. H. Male	10
Sarah Mead	2
Catherine V. Neefus	13
Catherine C. O'Brien	4
Lowell M. Palmer	10
Catharine A. Peck	1
Alletta C. Rapelyea	4
Elizabeth M. Rapelyea	5
Georgianna J. Remsen	4
Charles H. Reynolds	12
Willard P. Reid	41
William L. Ricard	5
Julie Moore Rhodes	8
Alice W. Runyon	13
Rebecca H. M. Sawyer	7
Mary E. Sanford	3
78 John C. Schenck	5
Cornelius C. Schenck	5
Isaac Sherwood	3
John S. Siney	13
William Shipman	12
D. Springsteen	3
Mary E. Smith	5
Phebe F. Stoutenburgh	14
Maria Suydam	3
A. V. H. Stuyvesant	33
Lillie B. Taft	10
Caroline Talman	8
George A. Thayer	18
Hubert G. Taylor	10
Joseph J. Tompkins	3
Joseph E. Tompkins	2
Sarah J. Tompkins	3
Harriet E. Tuthill	3
Ida A. Van Alst	14
Sarah J. Vanderveer	2
George S. Van Wickel	3
J. Van Sicklen and P. Lott, trustees	8
A. C. Washington	4
Estate, William Wall	4
Helen E. Wardwell	15
Harriet M. T. Weaver	100
Williamsburgh City Fire Insurance Co	168
Gertrude C. Winthrop	70
Henry Wood	30

Name of stockholder.	No. of shares.
Mary Wood	30
Sarah J. Wood	2
Peter Wyckoff	364
Cornelius Zabriskie	25
Julia A. Williams	14
Henry E. Williams	3
Mary A. Williams	18
Sarah A. Williams	1

Found. F. E. C. 79 IV. That heretofore and during the month of May, 1897, the First national bank, at the request of said board, made and filed with said board a statement giving them the items of assets and liabilities of said First national bank, a true copy of which statement is annexed to said petition marked "Schedule I," and is hereby made a part of this finding of fact.

Found. F. E. C. V. That thereafter and on or about the 29th day of May, 1897, said bank or banking association received from said board a notice that the shares of said bank or banking association had been assessed for the year 1897 at three hundred and ninety-three dollars ($393) on each share. A true copy of said notice is annexed to said petition marked "Schedule II," and is hereby made a part of this finding of fact.

Found. F. E. C. VI. That during the month of June, 1897, when the books called "Annual Record of the Assessed Valuation of Real and Personal Estate" were required to be kept open for examination and correction, the relators claiming to be aggrieved by the proposed assessed valuation of their respective bank shares, which had been fixed by the said board of assessors at the sum of three hundred and ninety-three dollars ($393) on each share thereof, applied on or about the 29th day of June, 1897, to the said board of assessors to have the same corrected and reduced. A true copy of the application of the relators to said board of assessors is annexed to said petition marked "Schedule III," and is hereby made a part of this finding of fact. That said application was made in due time and manner to the proper officers to correct said assessment.

Found. F. E. C. 80 VII. That pursuant to said application of the relators the said board of assessors notified the relators of a hearing before said board relative to said assessment on the 6th day of July, 1897. A true copy of said notice fixing the date of said hearing is annexed to said petition marked "Schedule IV," and is hereby made a part of this finding of fact.

Found. F. E. C. VIII. That thereafter and pursuant to the notice of said board, the relators appeared for a hearing before said board on said 6th day of July, 1897, by Mr. John G. Jenkins, one of the relators and president of said First

National Bank of Brooklyn, and Frank Harvey Field, Esq., their attorney, and on said hearing Mr. Jenkins was duly sworn and examined as to the value of the bank shares of the relators, and a true copy of his examination before said board is annexed to said petition marked "Schedule V," and is hereby made a part of this finding of fact.

Found. F. E. C. IX. That the said board thereupon proceeded to reconsider said assessment of said bank shares of the relators and fixed the same at three hundred and thirty-six dollars ($336) on each share thereof; and on or about July 30, 1897, they finally completed the assessment-rolls for 1897, and delivered them to the common council of the city of Brooklyn, and on the 31st day of July, 1897, said board of assessors gave public notice that said rolls had been delivered to said com-on council, and would remain open for public inspection in charge of said common council for a period of fifteen days from said 31st day of July, 1897. Said notice was duly published as required by law.

Found. F. E. C. 81 X. That it appears by said completed rolls that the assessment on the bank shares of the relators is fixed and confirmed at the sum of three hundred and thirty-six dollars ($336) on each share therefor for the year 1897.

Found. F. E. C. XI. That in determining the value of the shares of stock of the First National Bank of Brooklyn, prior to or by the 1st day of June, 1897, the said board considered the following items:

Capital stock	$300,000 00
Surplus	900,000 00
Undivided profits	30,303 54
Making a total of	$1,230,303 54

and from such amount deducted the assessed value of the real estate owned by the First national bank, $50,000, leaving a balance of $1,180,303.54, which amount was divided by 3,000, the total number of shares of stock, to determine the value of each share; that the value of each share of stock of the said bank was thereupon determined to be $393, and the assessment was fixed accordingly, notice thereof being sent to the president of the First National Bank of Brooklyn, John G. Jenkins. That after hearing a committee representing all the national and State banks located in the borough (late city) of Brooklyn, and the application for the correction of the assessments upon the shares of stock of the First National Bank of Brooklyn made by the shareholders therein, the said board reduced the assessments upon the said stock from the sum of $393 per share to the sum of $336 per share; that the capital stock, surplus and undivided profits of the said bank amounted to $1,253,226, a value per share of $417.74; that a 4 per cent. allowance upon the loans and discounts of the said bank allowed by these
82 respondents amounted per share to $46.48; that the amount of the assessed value of the real estate amounted per share

to $19.93; that the value of the dividends paid for six months amounted per share to $8; that the value of the taxes paid for the preceding year amounted per share to $7.07; that the respondents, to determine the actual value of the share stock of the First National Bank of Brooklyn, deducted from the gross value per share found by them to be $417.74, the sum of $81.48, and finally fixed the actual taxable value of the stock of the First National Bank of Brooklyn at $336 per share. That similar allowances were made to all of the banks located in the city of Brooklyn.

Found. F. E. C.

XII. That said assessment-rolls have been finally completed and delivered to the common council of the city of Brooklyn.

Found as to non-deduction of capital invested in U. S. securities. F. E. C.

XIII. That said board of assessors in fixing the value of the shares of stock of the relators have not deducted from such value that part of said value which was invested in United States bonds, United States legal tenders, United States gold certificates, United States silver certificates, national bank notes, Brooklyn tax certificates, the amount of the circulation of the said First national bank, the indebtedness of said bank, and the capital of said bank invested in the stock of other corporations taxed on their capital, notwithstanding the fact that said board of assessors, in arriving at the value of the capital stock of trust companies in this State in which the stockholders are employing moneyed capital as individual citizens, did not estimate as a portion of the taxable value of said capital stock the value thereof which is derived from the United States bonds and other non-taxable securities in which such capital stock is invested; but

83 deducted from the value of such capital stock of trust companies and private bankers a sum equal to the amount which was and is invested in United States bonds and other non-taxable securities.

Found, except as to the last two words "moneyed capital," in place of which I find they "use money as capital."

XIV. That the following trust companies do business within the city of Brooklyn where the said First National Bank of Brooklyn is located, namely:

Brooklyn Trust Company,
Franklin Trust Company,
Hamilton Trust Company,
Kings County Trust Company,
Long Island Loan and Trust Company,
Manufacturers' Trust Company,
Nassau Trust Company of the City of Brooklyn,
People's Trust Company;

and the capital stock of said trust companies is divided into shares and is owned and held by various individuals and corporations residing in the borough (late city) of Brooklyn and elsewhere; and the said trust companies and the stockholders therein use and employ moneyed capital.

Refused. XV. The moneyed capital thus used and employed by said trust companies and the stockholders therein, is invested for that purpose in securities by way of loan, discount and otherwise, which are from time to time, according to the rules of business, reduced again to money and reinvested. The said trust companies are corporations in which individual citizens own the shares of stock, and the capital of said companies, employed in carrying on its business, is money, and the object of such business is the making of profit by its use as money; and the said trust
84 companies and the stockholders therein so using and employing moneyed capital as aforesaid come into direct competition with the national banking associations and the stockholders therein in their use and employment of moneyed capital.

Found. XVI. The return made by the Brooklyn Trust Company to the board of assessors for the year 1897 contains the following:

Gross assets	$13,157,824 17
Capital stock	1,000,000 00
Surplus profits and reserve funds, less 10 per cent. of capital	1,317,315 04
Rate of div., 16 per cent.	
General individual deposits	10,739,505 13
Reserved for taxes	1,000 00
Actually paid for real estate	128,111 21
Amount invested in the city of Brooklyn non-taxable bonds	1,133,000 00
Amount invested in U. S. bonds	1,493,305 24

That the board of assessors in fixing the value of the capital stock of said Brooklyn Trust Company proceeded in the following manner:

Gross assets	$13,157,824 17

From which they deducted the following items:

10 per cent. of capital	$100,000 00
Deposits	10,739,505 13
U. S. bonds	1,493,305 24
Non-taxable bonds	1,133,000 00
Assessed value of real estate	117,800 00
Total	$13,574,610 37

leaving no capital stock assessable for taxation for the year 1897.

Found. F. E. C. XVII. The return made by the Kings County Trust Company to the board of assessors for the year 1897 contains the following:

85	Gross assets	$1,163,000 00
	Capital stock	500,000 00
	Surplus profits and reserve funds	713,000 00
	Rate of div., 8 per cent.	
	General indebtedness	1,213,000 00
	Actually paid for real estate	201,600 00
	Amount invested in U. S. bonds	400,000 00
	Amount invested in Kings County, Brooklyn and New York City bonds	543,000 00

That the board of assessors in fixing the value of the capital stock of said Kings County Trust Company proceeded in the following manner:

Gross assets	$1,163,000 00
From which they deducted the following items:	
Ten per cent. of capital	$50,000 00
General indebtedness	1,213,000 00
U. S. bonds	400,000 00
Non-taxable bonds	543,000 00
Assessed value of real estate	130,000 00
Total	$2,336,000 00

leaving no capital stock assessable for taxation for the year 1897.

Found. XVIII. The return made by the Long Island Loan and Trust Company to the board of assessors for the year 1897 contains the following:

Gross assets	$3,795,947 97
Capital stock	500,000 00
Surplus profits and reserve funds	411,378 26
General indebtedness	2,884,569 71
Amount invested in U. S. bonds	488,250 00
Amount invested in city of Brooklyn non-taxable bonds	100,000 00

That the board of assessors in fixing the value of the capital stock of said Long Island Loan and Trust Company proceeded in the following manner:

86	Gross assets	$3,795,947 97
	From which they deducted the following items:	
	Indebtedness	$2,884,569 71
	Assessed value of real estate	145,000 00
	Amount invested in stock of other corporations taxed upon their capital	178,575 00
	U. S. securities	488,250 00
	City of Brooklyn non-taxable bonds	100,000 00
	Total	$3,796,394 71

leaving no capital stock assessable for taxation for the year 1897.

Found. XIX. The return made by the Franklin Trust Company to the board of assessors for the year 1897, contains the following:

Gross assets	$6,894,538 00
Capital stock	1,000,000 00
Surplus profits or reserve funds, less 10 per cent. of capital	782,981 00
General indebtedness	5,090,172 00
Accrued interest due depositors	21,344 00
Uncalled-for dividends	40 00
Actually paid for real estate	487,986 00

That the board of assessors in fixing the value of the capital stock of said Franklin Trust Company proceeded in the following manner:

Gross assets	$6,894,538 00

From which they deducted the following items:

General indebtedness	$5,090,172 00
Due depositors	21,344 00
Uncalled-for dividends	40 00
Assessed value of real estate	270,000 00
Amount invested in stock of other corporations taxed on their capital	549,645 00
87 Invested in U. S. securities	641,645 00
Invested in city of Brooklyn securities	374,440 00
Total	$6,974,441 00

leaving no capital stock assessable for taxation for the year 1897.

Found. XX. The return made by the Manufacturers' Trust Company to the board of assessors for the year 1897 contains the following:

Gross assets	$3,720,059 66
Capital stock	500,000 00
Surplus profits, less 10 per cent. of capital	564,569 94
Indebtedness:	
Due depositors	2,616,669 79
Interest due depositors	18,278 37
Expenses incurred	1,130 00

That the board of assessors in fixing the value of the capital stock of said Manufacturers' Trust Company proceeded in the following manner:

Gross assets	$3,720,059 66

From which they deducted the following items:

Indebtedness:	
Due depositors	$2,616,669 79
Interest due depositors	18,278 37
Expenses incurred	1,130 00
Amount invested in stock of other corporations taxed on their capital	193,327 96
Amount invested in U. S. securities and city of Brooklyn bonds	986,453 39
Total	$3,815,859 51

leaving no capital stock assessable for taxation for the year 1897.

88 Found. XXI. The return made by the People's Trust Company to the board of assessors for the year 1897 contains the following:

Gross assets	$8,016,102 01
Capital stock	1,000,000 00
Surplus profits or reserve funds, less 10 per cent. of capital	1,033,780 47
Indebtedness:	
Accrued interest on deposits	17,950 10
Due depositors	6,091,081 12
Taxes accrued	750 00
Paid for real estate	60,000 00

That the board of assessors in fixing the value of the capital stock of said People's Trust Company proceeded in the following manner:

Gross assets	$8,016,102 01
Indebtedness:	
Accrued interest on deposits	$17,950 10
Due depositors	6,091,081 12
Taxes accrued	750 00
Assessed value of real estate	30,000 00
Amount invested in stock of other corporations taxed on their capital	220,920 00
Amount invested in U. S. securities	1,795,000 00
Amount invested in city of Brooklyn exempt bonds	837,350 00
Total	$8,993,051 22

leaving no capital stock assessable for taxation for the year 1897.

Found. XXII. The return made by the Hamilton Trust Company to the board of assessors for the year 1897 contains the following:

	Gross assets	$5,320,631 52
89	Capital stock	500,000 00
	Surplus profits or reserve funds	503,385 15
	Indebtedness due depositors	4,316,996 37
	State taxes	250 00
	Paid for real estate	15,113 64

That the board of assessors in fixing the value of the capital stock of said Hamilton Trust Company proceeded in the following manner:

Gross assets	$5,320,631 52

From which they deducted the following items:

Indebtedness	4,316,996 37
Assessed value of real estate	11,200 00
Amount invested in stocks of other corporations taxed upon their capital	189,214 40
Amount invested in U. S. securities	235,500 00
Amount invested in Brooklyn bonds	597,100 00
Total	$5,350,010 77

leaving no capital stock assessable for taxation for the year 1897.

Found. XXIII. The return made by the Nassau Trust Company to the board of assessors for the year 1897 contains the following:

Gross assets, less 10 per cent. of capital	$709,120 00
Capital stock	500,000 00
Surplus profits or reserve funds, less 10 per cent. of capital	209,120 00

That the board of assessors in fixing the value of the capital stock of said Nasssau Trust Company proceeded in the following manner:

Gross assets	$709,120 00

From which they deducted the following items:

90	Amounted invested in stock of other corporations taxed upon their capital	$2,000 00
	Amount invested in U. S. securities and non-taxable municipal bonds	700,759 00
		702,759 00
	leaving an assessed valuation of	$6,361 00

Found. XXIV. That the same deductions were also made by said board of assessors in the case of each of the trust companies above named, and all of said trust companies, by reason

of said deductions, were wholly freed from assessment for taxation on their capital stock, except in the case of the said Nassau Trust Company, the capital stock of which was assessed at $6,361.

Found, except as to words "moneyed capital," which I change to "money."

XXV. That the owners and holders of the shares of the capital stock in each and all of said trust companies within the State of New York are "individual citizens" using and employing "moneyed capital" for profit by its use as money. That the shares of stock of such trust companies in the hands of the owners or holders thereof are exempt from taxation under subdivision 16 of section 4 of "the tax law," chapter 908 of the Laws of 1896 of the State of New York, which reads as follows:

"The owner or holder of stock in an incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock."

Found.

XXVI. That the aggregate assessed value of the share stock of the national banks of the borough (late city) of Brooklyn for the year 1897, as ascertained and fixed by the
91 board of assessors of said city, is six million, four hundred and ninety-five thousand, one hundred dollars ($6,495,100). That certain of the shareholders of said stock applied for a reduction or cancellation of their individual assessments on their holdings of said bank stock, and the same was reduced or canceled to the amount of two million, one hundred and forty-nine thousand, five hundred and seventy-eight dollars ($2,149,578), leaving the amount of share stock of national banks in the hands of the owners or holders thereof in the city of Brooklyn for the year 1897, on which the tax is actually and finally assessed at the aggregate sum of four million, three hundred and forty-five thousand, five hundred and twenty-two dollars ($4,345,522).

Found.

XXVII. That the total aggregate value of the capital, surplus and undivided profits of the eight trust companies of the borough (late city) of Brooklyn for the year 1897, as shown by their statements to the said board of assessors, amounts to eleven million, four hundred and eighty-five thousand five hundred and twenty-nine dollars and eighty-six cents ($11,485,529.86). That the total aggregate value of the capital, surplus and undivided profits of all the State and national banks of the borough (late city) of Brooklyn as ascertained by said board of assessors for the year 1897, after deducting therefrom the assessed value of the real estate of all of said banks, and the allowances set forth in paragraph 11 of the petition, amount in the aggregate to six million four hundred and ninety-five thousand one hundred dollars ($6,495,100). That of said capital, surplus and undivided profits of said trust companies, as above set forth, only the sum of six thousand three hundred and sixty-one dollars ($6,361) of the value thereof is capital
92 assessed for taxation for the year 1897, whereas four million three hundred and forty-five thousand five hundred and twenty-two dollars ($4,345,522) of the aggregate value of the cap-

ital, surplus and undivided profits of said banks is actually assessed for taxation for the year 1897.

Do not think any such evidence before me.
Refused.

XXVIII. That the total number of banks in the borough (late city) of Brooklyn are: National banks, 5; State banks, 17. That there has been no national bank organized in the borough (late city) of Brooklyn since the year 1884. That six of the trust companies of the borough (late city) of Brooklyn above mentioned have been organized since that date.

I find it was not made in case before me. F. E. C.

XXIX. That the amount of 10 per cent. deducted from the capital, surplus and undivided profits of trust companies in Brooklyn in the year 1897, in accordance with the provisions of "the tax law," was not made in the case of the national and State banks of the borough (late city) of Brooklyn, and no provision is made therefor in the said law or in any law of the State of New York.

Found.

XXX. That the condition of the People's Trust Company on the 1st day of May, 1897, as to the matters hereinafter mentioned was as follows:

Amount of trust funds held by the company	$272,918 52
General deposits	5,038,623 64
Time certificates	30,424 30
Demand certificates of deposit	833,989 06
Amount loaned on collateral	3,901,689 88
Amount loaned on personal security, including bills purchased	302,896 55

Found.

XXXI. That the condition of the Franklin Trust Company on the 1st day of May, 1897, as to the matters hereinafter mentioned, was as follows:

93 Deposits in trust	$187,162 93
General deposits	5,013,703 02
Amount loaned on collateral	1,721,932 44
Amount loaned on personal security, including bills purchased	505,996 05

Found.

XXXII. That the condition of the same company on the 1st day of June, 1897, as to the matters hereinafter mentioned, was as follows:

Deposits in trust	$232,160 36
General deposits	5,110,335 39
Amount loaned on collateral	1,558,911 44
Amount loaned on personal security, including bills purchased	460,291 20

Found.

XXXIII. That the condition of the Manufacturers' Trust Company on the 1st day of May, 1897, as to the matters hereinafter mentioned, was as follows:

Deposits in trust	$23,443 89
General deposits (including time and demand certificates)	2,661,466 82
Amount loaned on collateral	1,236,521 25
Amount loaned on bond and mortgage, and bills purchased	359,120 88

Proposed Rulings upon Questions of Law.

Refused. I. That the relators are or will be injured by said assessment of three hundred and thirty-six (8336) dollars on each of said shares.

Refused. II. That the trust companies located in the borough (late city) of Brooklyn, and the persons owning the shares of the capital stock thereof, are individual citizens using moneyed capital within the meaning of section 5219 of the
94 Revised Statutes of the United States, and the said trust companies use moneyed capital which comes in competition with the moneyed capital in the hands of national banks within the said borough.

I have so decided. III. That the said board of assessors have not deducted from the value of said shares the total investment of the capital of said bank or banking association in real estate, to wit, the sum of ninety-three thousand dollars; but have deducted only the sum of fifty thousand dollars, being the assessed value thereof, and that the sum of forty-three thousand dollars, being the balance of the value of said real estate, should be deducted from the value of said shares.

Refused. IV. That the provisions of "the tax law," chapter 908 of the Laws of 1896, in so far as they attempt to assess or fix the value of the shares of stock of national banks are in violation of the provisions of section 5219 of the Revised Statutes of the United States (section 124 of the national bank act), and are unconstitutional and illegal, and the acts and proceedings of the said board of assessors thereunder in levying or attempting to levy assessment for taxation on the said shares of stock of the relators were illegal and void.

Refused. V. That the assessment and taxation made or attempted to be made on the shares of stock of the relators is made at a higher rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State, and is, therefore, illegal and in violation of the United States Revised Statutes.

I have so decided. VI. That the said board of assessors should deduct from the value of said shares a sum which bears the same proportion to said value as the assessed value of the real property bears to the capital stock.

Refused on evidence before me. 95 VII. That the said board of assessors in fixing the value of the shares of stock of the relators should

deduct from such value that part thereof which was invested in United States bonds, United States legal tenders, United States gold certificates, United States silver certificates, national bank notes, Brooklyn tax certificates, and the amount of the circulation of the said First national bank.

Refused. VIII. That the deduction of 10 per cent. from the amount of the capital, surplus and undivided profits of the trust companies in Brooklyn, and the failure to make similar deductions from the capital, surplus and undivided profits of the First national bank and the other national banks of the borough (late city) of Brooklyn, constitute an inequality of assessment and taxation and is in violation of the provisions of section 5219 of the United States Revised Statutes, in that it is assessing the moneyed capital of said national banks at a higher rate than is made or assessed upon other moneyed capital in the hands of individual citizens in this State.

Refused. IX. That the assessment of the said bank shares of the First national bank should be cancelled and stricken from the assessment-rolls of the borough (late city) of Brooklyn for the year 1897.

Respectfully submitted.

PECK & FIELD,
Attorneys for Relators, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

FRANK HARVEY FIELD, *Of Counsel.*

96 *Stipulation as to Additional Finding of Fact.*

Supreme Court, Kings County.

PEOPLE *ex Rel.* JENKINS
against
NEFF and Others, as Assessors.

It is hereby stipulated, that the findings of fact made by the referee herein be so amended as to include a finding of fact as follows: "That no national bank was incorporated in the city of Brooklyn from the year 1884 up to and including the year 1897, and that within such period fourteen State banks were incorporated in said city."

PECK & FIELD,
Attorneys for Relator.
JOHN WHALEN,
Corporation Counsel.

96a *Findings of Fact and Conclusions of Law.*

(Title.)

This proceeding and the issues therein having come on for a hearing before me, the referee duly appointed by this court to hear and determine the same, and the relators appearing by their counsel,

Frank Harvey Field, Esq., and the respondents by Hon. William J. Carr, after hearing all the evidence and testimony introduced in behalf of both parties, I do make and file this my report as follows:

I do find as matter of fact—

First. That at all the times mentioned in the petition the First National Bank of Brooklyn was and still is a national bank or banking association created and existing under and by virtue of the laws of the United States, and said bank is located and has its office for the transaction of business in the thirteenth ward of the city of Brooklyn.

Second. That at all the times mentioned in the petition Barzillai G. Neff, as president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernest J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Quinn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor and Benjamin W. Wilson constituted the board of assessors of the city of Brooklyn, and as such were empowered within the provisions of the laws of the State of New York and of the United States applicable thereto, and especially within the provisions of section 5219 96*b* of the United States Revised Statutes and the provisions of the tax law, being chapter 908 of the Laws of 1896 of the State of New York, and in accordance with the facts, to fix the valuations of bank shares in said city for the purpose of assessment for taxation.

Third. That at the times mentioned in the petition, the petitioners were and still are stockholders of the said First National Bank of Brooklyn, owning the number of shares of stock of said bank set opposite their respective names as follows:

Name of stockholder.	No. of shares.
Joanna Adams	1
Malvina Appleton	6
Cornelius A. Atwell	8
John M. Armstrong	6
John E. Backus	3
Fred. D. Backus	3
Hannah M. Barton	21
Reba C. Bamberger	10
Edwin Beers	60
Mary L. Beers	38
Elizabeth W. Beers	10
Francis B. Beers	10
George D. Betts	10
George Bell	27
Margaret Bell	12
John L. Billings	12
Estate J. M. Brookfield	20
William Brookfield	10
W. A. Butler, trustee	12
Daniel M. Burroughs	2

	Name of stockholder.	No. of shares.
	Juliet W. Camp	4
	Thomas Cruttenden	4
	Frederick Cromwell	40
	Esther H. Cromwell	40
96c	Charles W. Cooper	47
	George W. Conselyea	4
	John Cowenhoven, ex'r	20
	Frances E. Cross	70
	Charles M. Davidson	15
	Emma B. Day	4
	Mary J. De Bevoise	6
	John C. De Bevoise	10
	John I. De Bevoise	5
	Joanna W. De Bevoise	7
	Estate Elizabeth De Bevoise	3
	Marshall S. Driggs	13
	Charles D. Ditmas	2
	Catherine Ditmas	4
	John D. Ditmas	4
	William G. Dunn	6
	Antoinette L. Edwards	71
	Julia L. Ellis	71
	Mary Elizabeth Eddison	43
	Phebe M. Ely	10
	W. A. Field	10
	R. W. Gage	4
	William F. Garrison	16
	William Green	5
	A. Louise Greig	15
	John Good	17
	Thomas Guille	30
	G. L. Hardy	14
	Isaac Hamburger	10
	Jane E. Hageman	2
	F. T. Hewitt	30
	Estelle W. Hills	2
	Henry H. Hildreth	6
	Edgar A. Hildreth	6
96d	Alexina F. Hooker	9
	William E. Horwill	11
	Estate William H. Husted	30
	Charles S. Husted	60
	M. Catherine Husted	25
	S. L. Husted, Jr	25
	Anna J. Hunter	18
	Hannah Hulst	2
	Anna M. Irwin	4
	Theodore F. Jackson	60
	John G. Jenkins	63

Name of stockholder.	No. of shares.
John G. Jenkins, ex'r	16
Frank Jenkins	10
Cornelia L. Jenkins	14
Mary S. Johnson	7
Martin Joost	40
George E. Kitching	186
George Kitching	40
Theodore B. Kolyer	2
Jane E. Kolyer	2
Louise B. W. Ladew	4
Edward R. Ladew	10
Joseph Liebmann	10
Mary E. Lever	3
Maria L. Linington	4
Estate C. H. Marshall	12
William Marshall	50
C. H. Marshall	12
Moses May	150
W. H. Male	10
Sarah Mead	2
Catherine V. Neefus	13
Catherine C. O'Brien	4
Lowell M. Palmer	10
96e Catharine A. Peck	1
Alletta C. Rapelyea	4
Elizabeth M. Rapelyea	5
Georgianna J. Remsen	4
Charles H. Reynolds	12
Willard P. Reid	41
William L. Ricard	5
Julie Moore Rhodes	8
Alice W. Runyon	13
Rebecca H. M. Sawyer	7
Mary E. Sanford	3
John C. Schenck	5
Cornelius C. Schenck	5
Isaac Sherwood	3
John S. Siney	13
William Shipman	12
D. Springsteen	3
Mary E. Smith	5
Phebe F. Stoutenburgh	14
Maria Suydam	3
A. V. Stuyvesant	33
Lillie B. Taft	10
Caroline Talman	8
George A. Thayer	18
Hubert G. Taylor	10
Joseph J. Tompkins	3

Name of stockholder.	No. of shares.
Joseph E. Tompkins	2
Sarah J. Tompkins	3
Harriet E. Tuthill	3
Ida A. Van Alst	14
Sarah J. Vanderveer	2
George S. Van Wickel	3
J. Van Sicklen and P. Lott, trustees	8
A. C. Washington	4
96f Estate William Wall	4
Helen E. Wardwell	15
Harriet M. T. Weaver	100
Williamsburgh City Fire Insurance Co	168
Gertrude C. Winthrop	70
Henry Wood	30
Mary Wood	30
Sarah J. Wood	2
Peter Wyckoff	364
Cornelius Zabriskie	25
Julia A. Williams	14
Henry E. Williams	3
Mary A. Williams	18
Sarah A. Williams	1

That during the month of May, 1897, the First national bank made and filed with the board of assessors a statement giving them the assets and liabilities of said bank, a copy of which is annexed to the petition and marked Schedule 1, and that thereafter the shares of said bank were assessed for the year 1897 at $393 on each share.

That thereafter and in June of 1897 the said shareholders of said bank claiming to be aggrieved by the proposed assessed valuation of the respective bank shares, applied to the board of assessors to have the same corrected and reduced, a copy of which application is contained in the petition and marked Schedule 3, and that said application was made in due form and at the proper time, and that thereafter the said shareholders by Mr. John G. Jenkins, one of the petitioners, and by their attorney, Frank Harvey Field, Esq., appeared before the said commissioners and were duly sworn and examined as to the value of said bank shares, a copy of which
96g examination is annexed to the petition and marked Schedule 5.

That thereupon the assessment of the shares of stock of the said First national bank was reduced to the assessed value to $336 on each share, and that on or about the 30th day of July, 1897, the completed assessment-rolls for 1897 were delivered by the assessors to the common council of the city of Brooklyn, and on the 31st day of July, 1897, said board of assessors gave public notice that said rolls had been delivered to said common council in pursuance of the law in such cases made and provided.

That according to said assessment-rolls, the bank shares of the

petitioners were assessed by the board of assessors, the respondents herein, at $336 on each share for the year 1897.

That in arriving at this valuation of $336 a share the said board of assessors or respondents proceeded as follows: The capital stock of the First national bank was valued at the sum of $300,000; its surplus at $900,000; its undivided profits at $30,303.54, making a total of $1,230,303.54, and that from such gross amount was deducted the sum of $50,000 as the assessed value of the real estate owned by the First national bank, leaving a balance of $1,180,303.54, which amount was divided by 3,000, the total number of shares of stock, in order to determine the value of each share, and that each share was assessed to the extent of the value so determined, that is, $393. That subsequently this assessment was corrected as above found by me, by valuing the capital stock, surplus and undivided profits of such bank at $1,253,226, making the value per share of $417.74. That 4 per cent. was allowed upon the loss and discounts of said
96*h* bank to the amount per share of $46.48. That the amount of the assessed value of the real estate per share was $19.93. That the value of the dividends paid for six months was $8 per share. That the amount of the tax paid for the preceding year per share was $7.07, and that the total sum—$81.48 per share—was then deducted from the said $417.74, and finally fixed and assessed at the value of $336 per share.

That the First national bank had on hand on June 1, 1897, gold coin of the United States amounting to $307,116.50, and silver coin amounting to $48,682.60, and that no deduction was made of this amount from the gross assets of the bank, or the value of its capital in arriving at the value of its shares as aforesaid.

That after the payment of the liabilities of the said national bank, the capital stock and surplus found would still be intact, and that it has not been proved by the evidence before me that the said gold and silver coin was part of the capital of the said national bank, and not money to pay depositors and creditors.

That in making up the gross value of the assets of said bank to arrive at the value of the shares aforesaid, the bank had included in its return the sum of $93,000 as the actual value of its real estate, whereas there was deducted from the gross amount by said assessors only the sum of $50,000, so that the total gross assets, after deducting said assessed value, was $43,000 more by reason of the actual value fixed by said bank.

I do also find that said board of assessors have failed to comply with section 24 of article 27, chapter 908 of the Laws of 1896, being the general laws relating to taxation, in that they did not de-
96*i* duct from the value of such shares of stock of the First national bank a sum which bears the same proportion to such value as the assessed value of the real property of said bank bears to the capital stock thereof.

I do also find, as it has been admitted before me, that the capital stock, the assessed value of the real estate, the surplus and other values other than the assessed value of the shares, were correctly fixed by the said board of assessors.

That it has been claimed on behalf of the relators that the assessment of the shares of capital stock of the First national bank was not only erroneous as to value, but absolutely illegal, as the method of arriving at that valuation, as provided by the tax laws, is unconstitutional and illegal as in violation of provisions of section 5219 of the United States Revised Statutes, section 124 of the national bank act.

That is to say, that by the provisions of chapter 908 of the Laws of 1896, trust companies and other corporations are taxed upon their capital stock after the assessed value has been fixed by the deduction of such part of its capital as is invested in non-taxable securities, and that a certain deduction is also allowed of 10 per cent. of its capital, as specified in section 12 of said chapter. That national bank shares, however, are assessed according to their actual value, no deduction being made for the capital of the bank which may be invested in non-taxable securities, and it is claimed by the relators that this is in violation of the provisions of the United States Revised Statutes above cited.

I do also find as matter of fact from the evidence before me that the trust companies therein named are not in competition with
96*j* national banks within the sense and meaning of the words of the said section 5219 of the Revised Statutes so as to make their shares of stock "other moneyed capital in the hands of individual citizens."

I do also find that there was no agreement between the relators and the respondents. That the deductions made by the board of assessors, reducing the assessed value from $393 to $336, was to be in place of any other deductions allowed by law.

Conclusions of Law.

I do find as matters of law:

First. That the provisions of chapter 908 of the Laws of 1896, providing for the taxation of corporations, trust companies and shares of banks and banking associations, are not unconstitutional or illegal as in violation of section 5219 of the United States Revised Statutes.

Second. That as the board of assessors failed to deduct from the gross assets or value of the capital of the First national bank the sum of $93,000, its actual value as included by the bank in the total figures, and did deduct only the sum of $50,000, that the remaining $43,000 should be deducted, which amounts to $14.33 per share.

Third. That there should also be deducted from the value of said shares a sum which bears the same proportion to such value as the assessed value of the real property of said bank bears to the capital stock thereof. That whereas the capital stock is $300,000, and the assessed value of the real estate $50,000, and the proportion one-sixth, therefore one-sixth should be deducted from the sum of $321.67,
the value of the shares, with the above deduction, which
96*k* leaves the amount $268.06, which I do find as matter of law upon the above facts to be the value at which the shares of stock of the First national bank should have been fixed.

All of which is respectfully submitted.
Dated December 6, 1898.

FREDERICK E. CRANE, *Referee.*

Please take notice that within is a copy of the report of the referee filed herein in the office of the county clerk of Kings county in the hall of records in the borough of Brooklyn, city of New York, on this day.
Dated December 8th, 1898.

JOHN WHALEN,
Corporation Counsel, Borough Hall, Brooklyn, N. Y. City.

To Frank Harvey Field, Esq., attorney for relator.

97 *Referee's Report.*

New York Supreme Court, Kings County.

THE PEOPLE OF THE STATE OF NEW YORK on Relation of John G. Jenkins and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

This proceeding has been brought by the relators to declare the assessment made by the defendants upon their shares of national bank stock illegal and void and erroneous for two reasons:
First. That the assessment was made at a greater rate than other moneyed capital in the hands of individual citizens of the State was assessed.
Second. That the deduction provided in section 24 of the tax law of the State of New York was not made.

First.

The contention of the relators is that whereas trust companies are assessed upon their capital and deductions made therefrom for capital invested in United States securities and non-taxable
98 property, and whereas, in assessing or valuing the shares of national bank stock held by individuals, no deduction is made for non-taxable securities in which the capital of the bank is invested, that therefore the rate of assessment of the national bank shares was greater than the rate of assessment of trust companies, or the shares of trust companies, in the hands of individuals.
If the trust companies were banks competing or doing the business of national banks, then under the case of Van Allen *vs.* The Assessors (3 Wallace, 573), this mode of assessment would be illegal, under section 5219 of the United States Revised Statutes which in substance embodies the provisions of the previous laws.
Section 5219 of the Revised Statutes of the United States, permitting the States to assess and tax national bank shares, limits their power to taxation at no greater rate than is assessed upon other

moneyed capital in the hands of individual citizens of such State. "Other moneyed capital" has been interpreted by the cases to mean moneyed capital which comes in competition with the business of national banks, and the State is prohibited from passing laws which discriminates against the shares of national banks in favor of other moneyed capital, holding the same position, doing the same work and coming in competition with the national banks.

Of course shares of trust companies would be such moneyed capital in the hands of individuals if the money which they represent, or in other words the trust company, is in competition with national banks as meant and referred to in the cases, so that any partiality shown to trust companies in the mode and manner of assessment and taxation would be the discrimination pro-
90 hibited by Congress. If, therefore, the trust companies are in competition with the business of the national banks within the meaning of this section of the Revised Statutes, as it has been interpreted by the United States Supreme Court, then, under the Van Allen case above referred to, the law which assesses trust companies on their capital, and national bank shares upon the value of the share, is unconstitutional, as not providing for an equal rate of taxation.

The first question for me to decide, therefore, is, does the trust company compete with the national bank within the meaning of this section as interpreted?

After a very careful reading of the Mercantile Bank case (121 U. S., 138), it appears to me that this point has been decided adversely to the relators. The duties of national banks and of trust companies were referred to in that case, and it would appear from the opinion that the court also considered the fact that trust companies loaned money on collateral security, which seems to be the relators' principal point of distinction in this case. The Mercantile case decided in my opinion that as a large part of the business of trust companies was different from the business of national banks, and that national banks, being banks of issue, differed from trust companies, that although the two might in some particulars carry on the same kind of business, yet the money of the individual invested in the trust company was not in such competition with the money of the individual invested in the national bank as to bring it within the meaning of "other moneyed capital" of section 5219, as interpreted by the Mercantile Bank case and the many others cited in the opinion.

Therefore, I feel constrained by reason of the Mercantile
100 Bank case to decide that the tax law of this State, providing for the taxation of trust companies upon their capital stock and the assessment of national bank shares upon their value in the hands of individuals, is not unconstitutional.

Second.

Admitting however, for the purposes of this case, that trust companies and national banks must be assessed at an equal rate, and that if the capital invested in non-taxable securities is deducted from

the capital of the trust company, so also must the value of non-taxable securities be deducted from the capital of national banks in arriving at the value of individual shares, yet in this case before me have the relators proved that the national bank was unequally assessed, or in other words that the First national bank, of which they were stockholders, had capital invested in non-taxable property which should have been deducted to make the equalization?

It appears from the evidence that on June 1, 1897, the First national bank had in hand gold coin of the United States amounting to $307,116.50, and silver coin amounting to $48,682.60, and that no deduction was made for this amount from the value of the capital of the bank in arriving at the value of its shares. It also appears that after the payment of its liabilities, the capital stock and surplus fund would be still intact. There being no further proof to show that this cash or coin was part of the capital and not money to be paid depositors or creditors, I am bound by the decision in the case of The Canal and Banking Co. *vs.* New Orleans (99 U. S., 97), to hold that the relators have not shown that this coin was part of the capital invested in non-taxable property.

101 Admitting this, however, it might be stated that the deduction allowed trust companies by section 12, article 1, chapter 908, of the Laws of 1896 (general tax law), and not national banks, would render the rate of taxation unequal; but in view of the tax law, article 9, whereby it appears that trust companies pay a franchise tax, while banks do not, and in view of the restrictions of the banking law upon investments and use of their capital and money by trust companies, which do not apply to national banks, it cannot be said that the legislature has, for this reason only, discriminated against national banks in favor of trust companies within the decisions of the United States Supreme Court.

Third.

I do find, however, that the assessors have not complied in assessing the shares of the First national bank with the provisions of section 2 of article 27 of the tax law of 1896, and also that there is included in the gross value of all the relators' property $93,000, as the value of the realty, which is only assessed at $50,000. It is uncontradicted in the testimony that in making up the gross value of the assets, capital, etc., $93,000, the value of the real estate was included, whereas only $50,000, the assessed value, was deducted by the assessors. If the relators included in their gross value $93,000, $93,000 should have been deducted by the assessors, and as only $50,000 was deducted, $43,000 remains to be deducted from the total, which, divided by the number of shares, three thousand, makes $14.33 which should be deducted from the assessed value of each share, making that value $321.67.

102 By section 24 of the tax law, there should also be deducted from the value of such shares a sum which bears the same proportion to such value as the assessed value of the real property of such bank bears to the capital stock thereof. The capital stock is $300,000, the assessed value of the real estate $50,000, the propor-

tion therefore one-sixth. Deducting one-sixth of $321.67, the value of the share, leaves $268.06, which I do find to be the amount at which the assessors should have fixed the value of each share of the First national bank.

Dated Brooklyn, October 17, 1898.

F. E. CRANE, *Referee.*

Please take notice that within is a copy of the report of the referee, filed herein in the office of the county clerk of Kings county, in the hall of records, in the borough of Brooklyn, city of New York, on this day.

Dated December 8, 1898.

JOHN WHALEN,
Corporation Counsel, Borough Hall, Brooklyn, N. Y. City.

To Frank Harvey Field, Esq., att'y for relator.

103 *Relators' Notice of Motion for an Order Modifying Referee's Report.*

Supreme Court, Kings County.

PEOPLE *ex Rel.* JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Please take notice, that on the report of the referee filed herein, and the exceptions filed thereto and on all the proceedings heretofore had herein, I shall apply to this court at a special term thereof to be held in the county court house in the borough of Brooklyn, county of Kings, on the 16th day of January, 1899, at half past ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order modifying said report so as to cancel and strike from the assessment-rolls of the city of Brooklyn the assessed value of the shares of stock of the relators for the year 1897,
104 and to confirm the said report as so modified, and for such other and further relief as to the court may seem just and proper.

FRANK HARVEY FIELD,
Attorney for Relators, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

To John Whalen, Esq., corporation counsel, borough hall, Brooklyn, city of New York, N. Y.

105 *Respondents' Notice of Motion for an Order Modifying Referee's Report.*

Supreme Court, Kings County.

THE PEOPLE *ex Rel.* JOHN G. JENKINS and Others
against
BARZILLAI G. NEFF and Others, as Assessors of the City *of the City* of Brooklyn.

Please take notice that on the report of the referee filed herein, and the exceptions filed thereto, and on all the proceedings heretofore had herein, I shall apply to this court, at a special term thereof to be held in the county court house in the borough of Brooklyn, Kings county, on the 16th day of January, 1899, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order modifying said report so as to fix the assessed value of the shares of stock of said relators at $336 per share, and to confirm the said report as so modified; and for such other and further relief as the court may deem proper.

JOHN WHALEN,
Corporation Counsel, Borough Hall, Brooklyn, N. Y.

To Frank Harvey Field, Esq., attorney for relators, 215 Montague street, Brooklyn, N. Y.

106 *Relators' Exceptions to Referee's Report.*

Supreme Court, Kings County.

JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Defendants.

Please take notice:

I. That the relators hereby except to the finding of fact contained in folio 32 of the referee's report herein, wherein he finds: "That after the payment of the liabilities of the said national bank the capital stock and surplus fund would still be intact, and that it has not been proved by the evidence before me that the said gold and silver coin was part of the capital of the said national bank and not money to pay depositors and creditors."

II. That the relators hereby except to the finding of fact contained in folio 34 of the referee's report herein, wherein he finds as follows: "I do also find that it has been admitted before me that the capital stock, the assessed value of the real estate, the surplus and other values other than the assessed value of the shares were correctly fixed by the said board of assessors."

107 III. That the relators hereby except to the finding of fact contained in folio 37 of the referee's report herein, wherein he

finds as follows. "I do also find as matter of fact from the evidence before me that the trust companies therein named are not in competition with national banks within the sense and meaning of the words of the said section 5219 of the Revised Statutes so as to make their shares of stock other moneyed capital in the hands of individual citizens."

IV. That the relators hereby except to the conclusion of law numbered "first" at folio 38 of the referee's report wherein he finds as matter of law "that the provisions of chapter 908 of the Laws of 1896, providing for the taxation of corporations, trust companies and shares of bank and banking associations, are not unconstitutional or illegal or in violation of section 5219 of the United States Revised Statutes."

V. That the relators hereby except to the refusal of the referee to find the relators' proposed finding of fact numbered "XIII," as requested by the relators.

VI. That the relators hereby except to the refusal of the referee to find the relators' proposed finding of fact numbered "XIV," as requested by the relators.

VII. That the relators hereby except to the refusal of the referee to find the relators' proposed finding of fact numbered "XV."

VIII. That the relators hereby except to the refusal of the referee to find the relators' proposed finding of fact numbered "XXV," as requested by the relators.

IX. That the relators hereby except to the refusal of the referee to find the relators' proposed finding of fact numbered "XXVIII."

X. That the relators hereby except to the refusal of the
108 referee to find the relators' proposed finding of fact numbered "XXIX," as requested by the relators.

XI. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "I."

XII. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "II."

XIII. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "IV."

XIV. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "V."

XV. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "VII."

XVI. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "VIII."

XVII. That the relators hereby except to the refusal of the referee to find the relators' proposed conclusion of law numbered "IX."

Dated Brooklyn, city of New York, December 10, 1898.

FRANK HARVEY FIELD,
Attorney for Relators, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

To John P. Wuest, county clerk: John Whalen, corporation counsel, attorney for defendants.

109 *Respondents' Exceptions to Referee's Report.*

Supreme Court, Kings County.

In the Matter of the Application of JOHN G. JENKINS and Others for a Writ of Certiorari Directed to Barzillai G. Neff and Others, Constituting the Board of Assessors of the City of Brooklyn, etc.

Please take notice that the respondents hereby except to the findings of fact contained in folios 33 and 34 of the report of the referee herein, wherein he finds that the "board of assessors have failed to comply with section 24 of article 27 of chapter 908 of the Laws of 1896, relating to taxation, in that they did not take from the value of such shares of stock of the First national bank a sum which bears the same proportion to such valuation as the assessed value of the real property of said bank bears to the capital stock thereof;" and also to the finding of fact contained in folio 37 of said report wherein said referee finds "that there was no agreement between the relators and the respondents that the deduction made by the board of assessors reducing the assessed value from $393 to $336 was to be in place of any other deductions allowed by law;" and also to the
110 conclusions of law made by said referee in said report and numbered "second" and "third."

Dated December 8, 1898.

JOHN WHALEN,
Corporation Counsel, Attorney for Respondents.

To Frank Harvey Field, Esq., attorney for relators; William P. Wuest, Esq., county clerk.

Evidence Taken before Referee.

Supreme Court, Kings County.

THE PEOPLE OF THE STATE OF NEW YORK on Relation of John G. Jenkins and Others, Stockholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Evidence taken before Frederick E. Crane, Esq., referee.

Appearances.

Mr. Frank Harvey Field, for the relators.

Hon. William J. Carr, assistant corporation counsel, for the respondents.

111 Mr. Field made a statement of the points at issue in the case.

EDWIN BOLITHO, being called and examined as a witness on behalf of the relators, testified as follows:

Direct examination by Mr. FIELD:

My residence is 439 Quincy street, and I am a clerk in the department of assessment; during part of the time up to the 1st of January, 1898, I was acting secretary of the board of assessors of the city of Brooklyn; I have in my custody the reports made during the year 1897 by the eight trust companies in the city of Brooklyn, and I have them with me. They are the reports made to the board of assessors of the city of Brooklyn by the Brooklyn Trust Company, the Franklin Trust Company, the Kings County Trust Company, the Long Island Loan and Trust Company, the Hamilton Trust Company, the Manufacturers' Trust Company, the Nassau Trust Company, and the People's Trust Company.

The eight statements were then produced by Mr. Bolitho.

By Mr. FIELD: I offer these statements in evidence for the purpose of showing the manner in which the various trust companies of the city of Brooklyn were assessed for the purpose of taxation in the year 1897, which is the same year in which the taxation of the shares of the stock of the relator arose.

By Mr. CARR: I object to the admission of these reports in evidence as immaterial, irrelevant, and incompetent as not within the issue framed. Furthermore, as papers not made by the assessors over which the assessors had no power or control, and as simply *prima facie* representations by trust companies, which the as-
112 sessors sought to tax in order to show that there was no property held by them subject to taxation.

By Mr. FIELD:

Q. Mr. Bolitho, are you familiar with the method of taxation pursued during the year 1897 by the board of assessors in the city of Brooklyn?

A. In some respects I am.

Q. Were these statements of the eight trust companies in question after being received by the board of assessors used for the purpose of ascertaining whether or not the said trust companies were liable to taxation?

A. Yes, sir.

Q. Was there any other evidence taken in regard to the property, assets, etc., of these eight trust companies than is disclosed by these reports?

A. Not that I am aware of.

Mr. Carr renews his objections, pleading the same grounds.

By Mr. CARR: He says "Not that I am aware of." I want to ask him if he was aware of all the proceedings of the board of assessors.

A. I think with respect to those matters I was.

Mr. Carr renews his objections on the same grounds.

By Mr. CARR: I admit that they were filed with the board of assessors by the various trust companies whose names are endorsed thereon, and that they are the real reports filed by those companies pursuant to statute.

Objections overruled. Exceptions taken.

The reports were received in evidence and marked as follows:

Brooklyn Trust Company, Exhibit 1.

Franklin Trust Company, Exhibit 2.

Manufacturers' Trust Company, Exhibit 3.

113 People's Trust Company, Exhibit 4.

Hamilton Trust Company, Exhibit 5.

Nassau Trust Company, Exhibit 6.

Kings County Trust Company, Exhibit 7.

Long Island Loan and Trust Company, Exhibit 8.

By Mr. FIELD:

I am familiar with the method in which the Brooklyn board of assessors proceeded in the year 1897 upon this record to determine whether or not the Brooklyn Trust Company was liable to assessment for that year.

Q. Please take this report and state just how the assessors proceeded with respect to that report (taking Exhibit 1).

By Mr. CARR: I object to that. I will make a concession.

It is conceded by the respondent that the capital of the trust companies in the city of Brooklyn was assessed for the year 1897 in the following manner: From the total gross assets of each company were deducted the amount of its indebtedness including sums due depositors, the assessed value of the real estate owned by the corporation, an amount equivalent to 10 per cent. of the capital stock whenever the corporation possessed a reserve fund or surplus profits exceeding the amount of said 10 per cent., such portion of the assets as were invested in securities of the United States, bonds of municipalities within the State, or in stock of other companies taxed upon their capital within the State, and any other securities exempt by law from taxation. It is further conceded that in the case of each of the trust companies referred to there was a surplus fund

114 exceeding in amount 10 per cent. of the capital stock and the reduction of 10 per cent. was made in each case.

By Mr. FIELD:

Q. Mr. Bolitho, for what amount was the Brooklyn Trust Company assessed upon its capital for the year 1897?

By Mr. CARR: I object to the question unless it be intended to show that the Brooklyn Trust Company was as a matter of fact assessed for an amount less than that provided by law. We stand ready to concede that this law was carried out in each case. What an ultimate assessment was I think is immaterial.

By Mr. FIELD: I think it is material because the actual assessment on the property of the respective companies that was assessed is the very point at issue in the minds of the United States courts,

because they want to ascertain which of these methods of taxation is more favorable than the other, if either is more favorable.

Objection overrruled; exception taken.

A. None.
Q. For what amount was the Franklin Trust Company?
A. None.
Q. The Hamilton Trust Company?
A. None.
Q. The Kings County Trust Company?
A. None.
Q. The Long Island Loan and Trust Company?
A. None.
Q. The Manufacturers' Trust Company?
A. None.
Q. The Nassau Trust Company?
A. $6,361.
Q. The People's Trust Company?
A. None.

Q. In the case of an individual owning shares of stock in
115 any of the above-named trust companies, were the shares of stock which he held in such trust company taxed in the hands of such stockholder?

By Mr. CARR: Don't answer that question, Mr. Bolitho. Of course they were not. That is a conclusion of law. It is conceded they were not.

By Mr. FIELD:

Q. In arriving at the value of the shares of the First national bank and the other national banks in the city of Brooklyn, Mr. Bolitho, was 10 per cent. of the amount of the capital deducted in a case such as that of the relator, where the surplus profits or reserve funds exceed 10 per cent. of the capital?

By Mr. CARR: I object. We will concede there were no deductions made from the value of the gross assets of the national banks and State banks in the city of Brooklyn except those provided by the tax law of 1896. It is conceded that the property of the First National Bank of Brooklyn was assessed in the year 1897 as follows:

Its capital stock was valued at the sum of $300,000; its surplus was valued at $900,000; its undivided profits at $30,303.54, making a total of $1,230,303.54, and that from such gross amount was deducted the sum of $50,000 as the assessed value of real estate owned by the First national bank, leaving a balance of $1,180,303.54, which amount was divided by 3,000, the total number of shares of stock in order to determine the value of each share, and that each share was assessed to the extent of the value so determined, that is, $393. That subsequently this assessment was corrected by valuing the capital stock, surplus and undivided profits of such bank at $1,253,226, a value per share of $417.74; that a 4 per cent. allowance was made

upon the loans and discounts of said bank to the amount
116 per share of $46.48; that the amount of the assessed value of the real estate per share was $19.93; that the value of the dividends paid for six months amount per share to $8; that the amount of the tax paid for the preceding year amounts per share to $7.07; and that the respondents, to determine the actual value of the shares of stock of this bank, deducted from the gross value per share as determined by them at $417.74, the sum of $81.48 per share as above set forth, and finally fixed the actual taxable value of the stock as dete-mined by them at $336 per share.

By Mr. FIELD:

Q. Were any other deductions than these made in the case of this national bank or any of the other national or State banks in the city of Brooklyn for the year 1897?

By Mr. CARR: We admit that this bank and all other State and national banks were assessed and taxed by this method, and that only these allowances were made.

W. ADDISON FIELD, being duly sworn as a witness on behalf of the relators, testified as follows:

Direct examination by Mr. FIELD:

I reside at 688 Putnam avenue, and am the cashier of the First National Bank of Brooklyn; on the 1st day of June, 1897, the investment of the First national bank in gold coin of the United States was $307,116.50.

By Mr. CARR: I admit that the respondents did not allow any deductions from the gross capital of the bank of any amount represented by gold coin of the United States, or United States legal-
117 tender notes, United States bonds, United States silver coin, silver certificates, gold certificates and national bank notes.

By Mr. FIELD:

Q. How much did the bank have invested on June 1, 1897, in United States silver coin?

A. $48,682.60.

By Mr. CARR: We will concede that there was no deduction made in that, and that the bank had on hand such articles.

By Mr. FIELD: The amount invested by the First National Bank of Brooklyn in the real estate in which our banking business is conducted, is $93,000, and the same is assessed at $50,000. This sum of $93,000 is included in the gross assets of the bank to the board of assessors, and it comprises a part of the sum making up the capital and surplus of the bank as represented to the board of assessors.

Cross-examination by Mr. CARR:

My knowledge about the valuation of this property is that it is so carried on our books; I have had no experience in determining the

value of the real estate in the bank building; I never bought or sold any real estate in the neighborhood of the bank; I am not a real-estate agent; I don't claim to be a real-estate expert; the $93,000 is what it cost us; personally, I did not buy it or have anything to do with the buying of it; my knowledge of what it cost is from information received as cashier of the bank; I was not the cashier of the bank at the time it was bought; it is carried on the books as the cost value, and my statement is based on that fact entirely, and this sum of $93,000 was returned to the board of
118 assessors as the value of the real estate, which was included in the total assets of the bank, which went to make up its capital, surplus and reserved profits as returned to the assessors. I made up the return and calculated its actual value as the sum of $93,000.

CHARLES D. YOUNG, being duly called and sworn as a witness on behalf of the relators, testified as follows:

My residence is 866 President street, Brooklyn; I am the president of the National City Bank of Brooklyn; my bank was incorporated in 1850 as a State bank, and was incorporated under the national bank act in 1865, and it has remained a national bank since that time.

Q. Has your bank suffered any in its deposits by reason of the competitions of the trust companies, Mr. Young?

By Mr. CARR: I object as immaterial, irrelevant, and incompetent, and not within the scope of this inquiry.

Objection sustained. Exception taken.

Q. Can you state whether or not your deposits have grown from year to year since your incorporation as a national bank?

By Mr. CARR: I object as immaterial, irrelevant, and incompetent, and not within the scope of this inquiry.

The REFEREE: I will allow the question.

Mr. CARR: I take an exception.

A. They have grown since we became a national bank, of course, but not to any amount within the last five or six years; might say within the last five years they have not increased as they have previous to that.

Q. Can you state whether or not you have lost depositors to trust companies?

119 By Mr. CARR: I object to that as immaterial, irrelevant and incompetent and not within the scope of this inquiry.

Objection sustained. Exception taken.

Our bank makes loans on collateral, and in making loans on collateral we use what is known as a collateral note; I will produce one of our collateral notes.

The collateral note was subsequently produced and offered in evidence.

By Mr. CARR: I object to its admission on the ground that it is

immaterial, irrelevant and incompetent, and does not tend to prove in fact pertinent to the scope of this inquiry.

Objection overruled. Exception. Paper admitted and marked Plaintiff's Exhibit 9.

EDWIN BOLITHO recalled.

By Mr. FIELD:

Q. Mr. Bolitho, can you state the total gross amount of the assessments made in the year 1897 on bank shares in the city of Brooklyn?

Mr. CARR: I object to that as immaterial, irrelevant and incompetent, and as not appearing to be within the knowledge of the witness.

Q. Did you assist in compiling the annual report in the department of assessments for the year 1897?

A. I compiled it wholly.

Q. Have you a copy of that report in your hands?

A. Yes, sir.

Question renewed.

A. The total amount at which all the banks were assessed for the year 1897 was $6,495,100.

Q. That is the total gross assessment on all bank shares, State and national, in the city of Brooklyn for the year 1897, is it?

A. Yes, sir.

120 Q. Can you state the gross amount of the assessment on bank shares sworn off in accordance with law for the year 1897 by the holders of such bank shares?

By Mr. CARR: I object to that as immaterial, irrelevant and incompetent, and not within the scope of this inquiry.

The REFEREE: I will allow it.

By Mr. CARR: I take an exception.

A. The total amount sworn off was $2,149,578.

Q. Please give the net amount of the bank shares in the city of Brooklyn that were held for assessment and taxation for the year 1897?

Same objection. Same ruling and exception.

A. The net amount which came upon the rolls was $4,435,522.

W. ADDISON FIELD recalled:

Our bank was incorporated as a State bank February 4, 1852, and as a national bank December 23, 1864; it still remains a national bank; its charter was extended; I have examined our deposits for the purpose of ascertaining whether or not we have gained or lost deposits in the last ten or fifteen years.

Q. Did your bank at any time within the last ten years commence paying interest to depositors?

Mr. CARR: I object to that as immaterial, irrelevant and incompetent, and not within the scope of this inquiry.

The REFEREE: I will allow that.
Mr. CARR: I take an exception to the ruling.

A. Yes.
Q. What induced your bank to take that action?

121 Mr. CARR: I object to that on the same ground as the previous question.
Objection sustained. Exception.

Q. Up to the time when you began to allow interest on deposits had there been an increase or falling off in your deposits?

Mr. CARR: I object to that on the same ground as stated in the objection to the previous questions.
Objection sustained. Exception.

Q. What was the year when you began to allow interest on deposits, Mr. Field?

Mr. CARR: Same objection on the same grounds.
The REFEREE: I will allow it. Exception.

A. 1891.
Q. You are still paying interest on deposits and have been since that time.

Same objection. Same ruling and exception.

A. Yes.

Cross-examination by Mr. CARR:

The amount of gold coin, silver certificates, silver coin and United States notes which we had on hand on June 1, 1897, was part of our cash on hand; we always keep cash on hand as a necessary part of our business; I can't say positively in what manner the trust companies conduct their business.

FRANK L. SNIFFEN, being duly called and sworn as a witness on behalf of the relators, testified as follows:

Direct examination by Mr. FIELD:

I am secretary of the Manufacturers' Trust Company of Brooklyn; my residence is 39 Montgomery place; the Manufacturers'
122 Trust Company is located at 198 Montague street, Brooklyn: the amount of its capital stock is $500,000; its surplus paid in is $500,000; the stock is divided into 5,000 shares of $100 each: our company loans money.
Q. What class of security do you accept as collateral?

By Mr. CARR: I object on the ground that it is immaterial, irrelevant and incompetent, and not pertinent to the scope of this inquiry, and that the business of this trust company is to be determined under the statute of the State of New York applicable thereto.
The REFEREE: I will allow it.
Exception taken.

By Mr. CARR: I concede that this trust company and every trust company exercised all the powers conferred upon it by statute.

A. We accept all the securities that are listed or local securities we know all about; we make loans on personal security in the shape of notes; we call them bills purchased.

By Mr. CARR: All of this evidence is taken under the same objection.

In making loans on personal security the process we go through in making them is the same as in other notes subject to discounts; you rely upon the strength of the makers as well as endorsers; these loans are reduced to money again and reinvested from time to time, and this process keeps up throughout the year; the capital of our company consists of securities and are deposited by law, but the capital was paid in in money; we use our capital, surplus and undivided profits for the purpose of making a profit upon it from its use as money; when we make a loan on collateral we use
123 a collateral note. (Witness is shown Exhibit 9.) I don't think our collateral note is exactly the same as this; this is an old form of a note; in a general way they are all about the same; our note is not the same as that; I was employed in the Chemical national bank for eight years; we keep deposits and pay out money on checks in the Manufacturers' Trust Company in the same manner as is done in the Chemical bank; I am familiar with the way in which the national banks in New York city and Brooklyn do business by reason of my connection and association with them in business.

Q. Does your trust company do business in the same general way that the national banks do, of your own knowledge?

A. In banking; yes.

By Mr. CARR: We have what we call a trust department in the Manufacturers' Trust Company, and receive trust accounts from estates and by order of the court. We keep the trust deposits separate from the general deposits.

Q. Which is the larger, your general deposits or your trust deposits?

Mr. CARR: I object on the same ground. Furthermore, that the circumstances pertaining to any bank or trust company are not material.

A. General deposits are the larger.

JAMES R. COWING, being duly called and sworn as a witness on behalf of the relators, testified as follows:

Direct examination by Mr. FIELD:

I reside at 119 State street, and am the second vice-president and secretary of the Franklin Trust Company; the capital of our company is $1,000,000 and its surplus is in the neighborhood of 1,000,000; the stock is divided into one-hundred-dollar shares.

124 Q. Do you invest money of your company on collateral security?

It is conceded by Mr. Carr that this company exercises all the powers conferred upon it by statute.

By Mr. CARR: I object to any examination as to any particular transaction of this company as immaterial, irrelevant and incompetent, and not pertinent to the scope of this inquiry.

The REFEREE: I overrule the objection, as applying to this question only.

Exception taken.

A. I wouldn't say we invest; we loan some; we loan money of our company on collateral.

Same objection.

We do not as a rule loan money of our trust company on a note with or without endorsers and without collateral.

By Mr. CARR: It is admitted for the purpose of this inquiry that the capital and surplus was all paid in in the shape of cash.

We use the money of our company for the purpose of making a profit from its use as money; we reduce our loans to money from time to time and reinvest them in other loans; when one loan is paid off we reloan the money, and when we have money to loan we keep up that process throughout the year, reducing the loans to money and loaning it again; we keep deposits for customers and pay them out on check in substantially the same manner as the banks do.

Q. Do your general deposits exceed your trust deposits?

By Mr. CARR: I object. That is immaterial, irrelevant and incompetent.

The REFEREE: I will allow it.

125 A. Yes, sir.

EDWARD JOHNSON, being duly called and sworn as a witness on behalf of the relators, testified as follows:

Direct examination by Mr. FIELD:

My residence is 24 Clifton place; I am the secretary of the People's Trust Company; the amount of the capital stock of our trust company is $1,000,000; its surplus is $1,000,000; we have undivided profits beyond that; our capital and surplus was all paid in in money; the surplus has since been increased from earnings; we keep general deposits and trust deposits; our general deposits exceed our trust deposits; we loan money on collateral security; we do not loan money on personal security, that is, a note with or without endorsers; we purchase notes; we occasionally purchase notes not secured by collateral.

Q. In what respect does the process of purchasing a note differ from discounting a note?

By Mr. CARR: This whole line of testimony is subject to these objections originally stated.

A. The business of purchasing notes is a very small part of our business, an incidental part; practically there is no difference; we buy a note at a discount; we reduce these loans on collateral and the money invested in notes on personal security to money again from time to time, and reinvest it in other loans; that process keeps up throughout the year; we use our money for the purpose of making a profit on it as money; we keep our deposits and check them out in the same manner that banks do.

Cross-examined by Mr. CARR:

The proportion of notes purchased to our general business is that out of assets of, say, $9,000,000, we have today, I presume, not
126 more than $300,000 worth of notes of all kinds, what we call bills purchased; that is about 3 per cent.; we have loaned out on collateral probably about $4,000,000 or more.

Redirect examination by Mr. FIELD:

Our company was chartered in 1889; the amount of our deposits in May, 1897, were somewhere in the neighborhood of $6,000,000; I cannot recall it exactly; we have trust deposits that are invested about $1,000,000, and uninvested probably about $300,000 invested and uninvested about $1,800,000, perhaps. By uninvested trust funds I mean moneys that have been deposited with us by estates, guardianships, etc., and also money deposited with us in litigation; the money that is received by order of court we don't invest; we allow interest on our daily balances; that varies in amount; we make special rates for slow deposits; on large sums the usual rate is 2 per cent.

Q. Mr. Johnson, can you give me the figures as to the condition of the People's Trust Company on the 1st day of May, 1897?

Mr. CARR: I object to the question on the ground that the condition of the People's Trust Company on the 1st day of May, 1897, is immaterial and irrelevant; and on the further ground that there has been already admitted in evidence the returns made by this trust company to the department of assessors for the purpose of assessment for taxation.

Question allowed. Exception.

A. I cannot.

Q. Can you tell me the amount of your deposits in trust on the 1st day of May, 1897?

127 Same objection. Objection overruled. Exception.

A. The amount of the trust funds $272,918.52. On the same day our individual deposits were $5,038,623.64; time certificates, $30,424.30; demand certificates of deposit, $833,989.06; loaned on collateral, $3,901,689.88; loaned on personal security, including bills purchased, $302,896.55; we have 10,000 shares of the stock of

our company held by various shareholders; the stock stands on our ledgers to the credit of various owners.

Mr. COWING recalled:

Q. Mr. Cowing, what was the amount of the trust deposits in the Franklin Trust Company on the 1st day of May, 1897?

By Mr. CARR: This is objected to on the same grounds as the objections to the testimony of Mr. Johnson on these points.

Same ruling and exception.

A. $187,162.93; general deposits on the same day, $5,013,703.02; loaned on collateral, $1,721,932.44; loaned on personal security, including bills purchased, $505,996.05; on the 1st day of June, 1897, the figures were as follows:

Deposits in trust	$232,160 36
General deposits	5,110,335 39
Loaned on collateral	1,558,911 44
Loaned on personal security, including bills purchased	460,291 20

The amount of our capital stock is $1,000,000; it is divided into 10,000 shares; this stock stands on our books in the names of various individuals and corporations.

By Mr. FIELD: I offer in evidence a statement showing the condition of the Manufacturers' Trust Company as of May, 1897.

128 By Mr. CARR: Objected to on the ground that it is immaterial and irrelevant for the purpose of this inquiry, and that it is immaterial what was the condition of the said trust company on that day, but the objection does not run to the form of the testimony.

Objection overruled. Exception. Evidence admitted.

Deposits in trust	$23,443 89
General deposits (including time and demand certificates)	2,661,466 82
Amount loaned on collaterals	1,236,521 25
Amount loaned on bond and mortgage and bills purchased	359,120 88

Mr. SNIFFEN recalled:

By Mr. FIELD: I show you a paper and ask you if that is the form of a collateral note used by the Manufacturers' Trust Company in making loans on collateral security?

A. That is a collateral note; yes, sir.

Mr. FIELD: I offer it in evidence.

Mr. CARR: Objected to on the ground that it is immaterial and irrelevant to any issue in this inquiry.

Objection overruled. Exception.

Received in evidence and marked Plaintiff's Exhibit 10.

By Mr. FIELD: I offer in evidence a letter from the Comptroller of the Currency at Washington, D. C., showing the date of the orig-

inal certificate of corporation of all national banks in Brooklyn; the date of the comptroller's certificate issued to them and the date of extension of their several charters.

129 Mr. CARR: Objected to on the grounds that the facts therein stated are not material or relevant to this issue, but not as to the form of the evidence.

The REFEREE: Do you object, Mr. Carr, to the form of this proof?

A. No.

Objection overruled. Exception.

Admitted in evidence and marked Plaintiff's Exhibit 11.

Mr. FIELD, recalled:

By Mr. FIELD:

Q. I show you a paper and ask you if that is the form of collateral note used by the First National Bank of Brooklyn in making loans on collateral?

A. Yes.

Mr. FIELD: I offer the paper in evidence.

By Mr. CARR: Objected to on the ground that it is not material or relevant to any issue in this inquiry.

Objection overruled. Exception.

Admitted in evidence and marked Exhibit 12.

The relator rests.

Mr. Carr, on behalf of the defense, offers schedule of assessment of bank shares for the year 1897 in the city of Brooklyn.

Received in evidence and marked Exhibit 1 for the defense.

The respondent rests.

130 *Opinion of Judge Hirschberg.*

Supreme Court, Kings County.

PEOPLE *ex Rel.* JOHN G. JENKINS and Others, Shareholders of the First National Bank of Brooklyn, Relators,
against
BARZILLAI G. NEFF and Others, Assessors of the City of Brooklyn, Respondents.

(Supreme Court, Kings, Special Term, September, 1899.)

Peck & Field (Frank Harvey Field, of counsel), for relators.

John Whalen (William J. Carr, of counsel), corporation counsel, for respondents.

HIRSCHBERG, *J.*:

Certiorari to review the assessment of relators' stock in the First National Bank of Brooklyn. The entire shares are three thousand, of the par value of one hundred dollars each. The original assessment was at the rate of $393 per share. This amount was reached

by taking the capital at $300,000, the surplus at $900,000, and the undivided profits at $30,303.54, making in all $1,230,303.54 and deducting $50,000, the assessed value of the real estate owned by the bank. A division of the remainder by the number of shares making the entire capital produced the result indicated. Complaint being made on grievance day, the assessors, after taking testimony, reduced the assessment to
131 the sum of $336 per share. This figure was reached by valuing the capital, surplus and undivided profits at $1,253,226, or the sum of $417.74 for each share. From this was deducted 4 per cent. upon the loans and discounts amounting per share to $46.48; the assessed value of the real estate amounting to $19.93; the amount of dividends paid for the preceding six months amounting to $8, and the amount of tax paid the preceding year amounting to $7.07, in all $81.48 per share, and leaving, the odd cents being disregarded, $336 per share, as has been said, as the amount finally fixed and assessed.

On the return of the writ a reference was ordered and the referee reduced the assessment to the sum of $268.06 per share. This reduction was affected in two items, viz.: the sum of $14.33 per share was deducted as the proportionate difference per share between the assessed value of the real estate, $50,000, and its actual value, $93,000; and $53.61 per share was deducted in assumed compliance with section 24 of chapter 908 of the Laws of 1896, as a sum which bears the same proportion to the value of the shares as the assessed value of the real estate of the bank bears to its capital stock. The case is now before the court for determination pursuant to section 253 of the tax law (chapter 908 of the Laws of 1896).

No question has been raised before me in reference to the amounts at which the respondents have fixed the capital, surplus and undivided profits of the bank, or the actual or assessed value of its real estate, nor, indeed, as to the accuracy of the various sums which the respondents deducted in determining the assessable value of the shares.

132 The respondents do contend, however, that the learned referee was in error in deducting the additional sum of $43,000 for the real estate, and in this contention I think they are correct. The real estate in question appears among the resources of the bank as worth $93,000, and both parties in the briefs submitted to me agree that this sum represent the actual full value as distinguished from the assessed value. There is no proof as to the assessment of other real estate in Brooklyn. Section 12 of the tax law provides that the capital stock shall be assessed at its actual value after deducting the assessed value of the real estate, and section 24 provides that in assessing shares of bank stock there shall be deducted from the value of such shares such proportionate sum as the assessed value of the real estate bears to the value of the shares. If the real estate appears in the assets at an actual value greater than the assessed value, and the shares are estimated at a value which is based in part upon the excess, it by no means follows, as the relators contend, that there is a double assessment upon the real estate. The

institution and the shareholders are distinct. The inquiry in question is as to the value of the shares as such, and into that question enters every element of value possessed by the corporation and belonging to the shareholders. The actual value of the real estate, although separately assessed, is such an element tending directly to the value of the shares. The deduction of the assessed valuation of the real estate only is in compliance with the language of the statute and in accordance with the practice and the adjudicated cases.

People *ex rel. vs.* Commissioners, 69 N. Y., 91.
133 People *ex rel. vs.* Asten, 100 N. Y., 597.
People *ex rel. vs.* Coleman, 126 N. Y., 433.
Peeple *ex rel. vs.* Barker, 144 N. Y., 94.

The rule is correctly stated by the relators in their petition, paragraph XXVII: "That in making an assessment on the shares of stock of national banks there shall only be deducted from the value of such shares the assessed value of the real property." The relators' contention is that this rule results in double taxation and in the assessment of the real estate of banks at a higher rate than other real estate. The contention seems to be unfounded, and in the absence of any evidence showing the adoption of a different rule or rate in the assessment of other bank stock or other real estate in Brooklyn than in this case it follows that the deduction of $14.33 per share, made by the referee was erroneous. The real point of the relators' contention is that in estimating the value of bank stock the real estate shall be taken at only its assessed valuation, but as was said in People *vs.* Barker, *supra*, page 100, "In case of corporations it may happen that an undervaluation in the assessment of the real estate as such will be corrected in its valuation as part of the capital, and so the undervaluation may be remedied and the whole property subjected to taxation at its real value. The fact, therefore, that the assessed value of the relators' real estate was $1,515,400 does not necessarily show that it was its full value, nor did it, we think, preclude the commissioners from estimating its value for the purpose of ascertaining the capital subject to taxation at its actual value, although it exceeded the assessed value. The act of the commissioners in undervaluing the real estate in its assessment as such did not estop the public
134 nor relieve them of the duty in ascertaining the value of the capital to estimate the real estate at its full value. We are not here concerned with any question of inequality of assessment as between the relator and other tax-payers. We hold that the commissioners could legally disregard the assessed value of the real estate in estimating the value of the capital, and the question of legality is the only point now in question." In that case the assessment both of the real estate and on the capital was against the corporation, but the reasoning is stronger where the real estate only is assessed against the corporation while the personal assessment is against shareholders whose property is separate and distinct from that of the corporation, although necessarily estimated upon the valuation of the property of the corporation.

The additional deduction of $53.61 per share made by the referee is conceded by the relators to have been erroneous, and therefore no consideration of the question involved is necessary.

The main contention of the relators, however, is that the entire assessment is illegal as in contravention of section 5219 of the United States Revised Statutes. This is the provision of the Federal law which authorizes the State to tax the shares of national banking associations, but expressly subject to the restriction "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens." I agree with the learned referee in holding that the assessment in this case is not violative of the restriction.

The argument for the relators is based upon the fact that in the assessment of trust companies United States bonds and other non-
taxable investments are deducted, together with so much of
135 the surplus profits or reserve funds as equals 10 per cent. of
the company's capital (section 12 of tax law), while the value of the bank shares is estimated without the allowance of such deduction. It is conceded by the relators that the alleged discrimination is of no avail unless as stated in the brief, "the moneyed capital invested in trust companies comes in competition with the moneyed capital invested in national banks." That there was no such competition between trust companies and national banks was held by the Supreme Court of the United States in the year 1887 in the case of The Mercantile Bank against New York, 121 U. S., 138. But the relators claim that chapter 696 of the Laws of 1893 which added an eleventh subdivision to section 156 of the banking law (chapter 689 of Laws of 1892) conferred upon trust companies all the powers given to individual banks and bankers by section 55 of the banking law, and that being thus invested with the power of discounting paper, the trust companies are engaged in the banking business and thus come into direct competition with the national banks. In the Mercantile Bank case it was held that the purpose of Congress in fixing limits to State taxation on investments in shares of national banks, was to render it impossible for the State in levying such a tax to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business with the banks. "The business of banking," said the court, page 156, "as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money, where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money
on collateral security; buying and selling bills of exchange;
136 negotiating loans, and dealing in negotiable securities issued
by the Government, State and national and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.'"

The court then examined the nature of the business of trust companies under the powers conferred by the New York statutes, and

concluded that although they receive money on deposit and invest it in loans and so deal in money and securities for money in such a way as properly to bring the shares of stock held by individuals therein within the definition of moneyed capital in the hands of individuals as used in the act of Congress, yet trust companies are not banks in the commercial sense of the word, and do not perform the functions of banks in carrying on the exchanges of commerce (page 159). The court then considered the question of unfair discrimination in the rate of taxation, and decided that as the tax laws of the State required an assessment upon the capital of trust companies at its actual value for local purposes, and in addition to this a State tax upon franchise based upon income, there was no inequality notwithstanding the deduction of Government bonds and other nontaxable securities. "It is evident," said the court, page 160, "we think, that taxation in this mode is at least equal to that upon the shares of individual stockholders, for if the same property was held for the same uses and taxed by the same rule in the hands of individuals as moneyed capital it would be subject to precisely the same deductions: in addition to which the individual would be entitled to make a further deduction of any debts he might owe.
137 Upon these grounds, therefore, we are of opinion that this mode of taxing trust companies does not create the inequality which the appellant alleges."

The Mercantile Bank case has been followed in principle in Newark Banking Company *vs.* Newark, 121 U. S., 163; Davenport Bank *vs.* Davenport, 123 U. S., 83; Bank of Redemption *vs.* Boston, 125 U. S., 60; Palmer *vs.* McMahon, 133 U. S., 660; Aberdeen Bank *vs.* Chehalis County, 166 U. S., 440; and Bank of Commerce *vs.* Seattle, 166 U. S., 463.

It is difficult to see how the amendment of 1893, upon which the relators rely to take this case out of the operation of these decisions, makes any material difference in the nature of the business of trust companies as conducted before and since. The added subdivision 11, hereinbefore referred to, authorized trust companies "to exercise the powers conferred on individual banks and bankers by section 55 of this act, subject to the restrictions contained in said section." The relators claim that this amendment conferred on trust companies for the first time the power to discount commercial paper. It is noticeable, however, that this power is not conferred upon individual banks and bankers by section 55 of the banking law. It is conferred by section 43 in the words "to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt." Section 55 is headed "Rate of interest," and is as follows: "Every bank and individual banker doing business in this State may take, receive, reserve and charge on every loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest
138 at the rate of 6 per cent. per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run.

"The knowingly taking, receiving, reserving or charging a greater

rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid the person paying the same, or his legal representative, may recover back twice the amount of the interest thus paid from the bank or individual banker taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a *bona fide* bill of exchange, note or other evidence of debt, payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight drafts, or at a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than 6 per cent. per annum.

"The true intent and meaning of this section is to place and continue banks and individual bankers on an equality in the particulars herein referred to with the national banks organized under the act of Congress, entitled 'An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof,' approved June 3, 1864."

Reading this whole section together it is evident that the effect and intention of the amendment was to permit the deduction of interest in advance by trust companies on all purchases of paper or other evidence of debt which they might legally make and to put them on an equality with the banks so far as concerns ques-
139 tion of interest and usury. Assuming, however, that it confers the power of discounting commercial paper, in the banking sense it falls very short of bringing trust companies into competition with the national banks or of constituting the business of such companies banking business in the sense of the reasoning in the Mercantile Bank case and the other cases cited. The distinctive business of such companies is to accept and execute trusts committed to them by the courts and by individuals; to receive moneys in trust and to accumulate the same at an agreed rate of interest; to receive the title to real or personal estate on trusts created in accordance with the laws of the State, and to execute such trusts; to accept and execute trusts for married women in respect to their separate property; to act as guardian for estates of infants; and to act as agents for corporations in reference to issuing, registering and transferring certificates of stock and bonds and other evidences of debt. They, incidentally to this business, are permitted to receive money on deposit and invest it in loans, and may employ it, on the relators' theory, in the general discount of commercial paper. The distinctive business of the national banks is to issue notes payable on demand and intended to circulate as money; to receive deposits payable on demand; to discount commercial paper; to make loans of money on collateral security; to buy and sell bills of exchange; to negotiate loans; and to deal in negotiable securities issued by the Government, State and national, and municipal and other corporations. Trust companies do not perform the functions of banks in carrying on the exchanges of commerce. But all their capital must

be invested in United States bonds, State or municipal bonds and first mortgages on improved real estate.

140 The field of investment is narrow and the rate of interest low. The banks, beyond the amount of their capital deposited to secure the issue of currency, do not appear to be equally restricted. While some of the functions of the business carried on by the two classes of the corporations are identical, the essential features are sufficiently diverse to avoid competition between the moneyed capital invested in them within the spirit of the cases cited.

Nor can it be said on the facts before the court that any inequality exists in the mode of taxation. The amount of the franchise tax paid by the trust companies is now shown, and it would be a violent assumption to find that such a tax based on income, together with a tax upon the actual value of corporate capital and surplus with all deductions allowed by law, constitutes a system which as a system discriminates in any appreciable degree in favor of the trust companies and against the national banks or the owners of their stock. The deduction of non-taxable securities and debts is the same as would be allowed if the same property was held for the same uses in the hands of individuals. See cases cited. Also, Van Allen *vs.* Assessors, 3 Wallace, 573; and People *vs.* Commissioners, 4 Wallace, 244. The deduction from the surplus to the extent of 10 per cent. of the capital antedates these decisions, and has never been regarded as an unfair discrimination.

There is no evidence of a legislative intent to make such discrimination.

In the Davenport Bank case, *supra*, it was held with reference to section 5219 that if a State statute creating a system of taxation does not on its face discriminate against national banks, and

141 there is neither evidence of a legislative intent to make such discrimination, nor proof that the statute works an actual and material discrimination, there is no case for holding it to be violative of the restriction contained in the section. By the terms of section 24 of the tax law of this State it is provided that in assessing national bank stock each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable property owned by individual citizens of this State, and the assessment and taxation shall not be at a greater rate than is made and assessed upon other moneyed capital in the hands of such individual citizens. The words of section 5219 are adopted. There is, therefore, neither legislative intent nor actual discrimination exhibited, nothing tending in any degree to discourage private capital from contributing to the national banking system, or to drive it into other channels of kindred investment.

The various other points and suggestions presented by the relators have been considered, but none of them disturbs the conclusion reached.

The final order will modify the referee's report in the two particulars indicated, affirming it as so modified, and leaving the assessment as fixed by the respondents.

142 *Final Order.*

At a special term of the supreme court, held in the county court house, in the borough of Brooklyn, in the county of Kings, on the 6th day of October, 1899.

Present: Hon. Michael H. Hirschberg, justice.

In the Matter of the Application of JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari

against

BARZILLIA G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn.

A writ of certiorari having issued out of this court on the 13th day of August, 1897, on the petition of John G. Jenkins and certain other persons, therein named as stockholders of the First National Bank in the city of Brooklyn, directed to Barzillia G. Neff and others constituting the board of assessors of the city of Brooklyn, requiring them to return all their proceedings relative to an assessment made by the board of assessors of the city of Brooklyn, on the shares of stock of the First national bank in the year 1897; and the board of assessors of the city of Brooklyn having made return to said writ filed with the clerk of this court on November 4, 1897; and an order having
143 been entered herein appointing Frederick E. Crane, Esq., referee, to take evidence for the parties hereto upon the issues raised by the said petition and return, and to report the same to this court with his findings of fact and conclusions of law; and the said referee having made his report to this court, wherein he found that the assessment imposed upon the shares of stock of the First national bank in 1897, should be reduced from the sum of $336 per share to the sum of $268.06 per share; and the respondents, the board of assessors of the city of Brooklyn having filed exceptions to said report; and the petitioners, John G. Jenkins and others, having filed exceptions to said report, and the respondents having made a motion to modify the report of the referee in such manner as to fix the assessed value of the shares of stock of the First national bank owned by the petitioners at the sum of $336 per share and to confirm the said report as so modified.

Now, after hearing William J. Carr, Esq., of counsel for the respondents, for the motion, and Frank Harvey Field, Esq., of counsel for the petitioners, in opposition thereto it is

Ordered, that the exceptions of the respondents be sustained, and the exceptions of the petitioners overruled; that the report of the referee be modified so as to exclude the reductions allowed by him in his conclusions of law numbered "second" and "third;" and that as modified it fixed the value of the shares of the First National Bank of the City of Brooklyn for the purpose of assessment for taxation in the year 1897, at the sum of $336 per share, and that said

report as so modified be, and it hereby is, confirmed and it is further

144 Ordered, that the assessment of the shares of stock of the said First National Bank of Brooklyn for the year 1897, as finally fixed by the board of assessors of the city of Brooklyn at $336 per share, be and it is hereby affirmed, and that the respondents recover the sum of $— as costs and disbursements of this proceeding to be taxed by the clerk.

Enter. M. H. H., *J. S. C.*

Granted October 6th, 1899.

WILLIAM WUEST, *Clerk.*

145 *Notice of Appeal.*

Supreme Court, Kings County.

In the Matter of the Application of JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Relators,

against

BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Please take notice that the relators above mentioned appeal to the appellate division of the supreme court, second department, from the final order entered herein in the office of the clerk of the county of Kings, on the 6th day of October, 1899, and from each and every part of said final order.

Dated Brooklyn, October 7, 1899.

FRANK HARVEY FIELD,
Attorney for Relators, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

To William P. Wuest, Esq., county clerk, hall of records, borough of Brooklyn, city of New York, N. Y.; John Whalen, Esq., corporation counsel, borough hall, borough of Brooklyn, city of New York, N. Y.

146 EXHIBIT 1.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the *the* Brooklyn Trust Company, showing its condition for the purpose of assessment on the 18th day of May, 1897.

Total gross assets, including real estate.....	$13,157,824 17
Of the above, $128,111.21 is in real estate.	
Of the above, $— is in personal property.	
Capital stock actually paid in, or secured to be paid in	1,000,000 00
Total amount of surplus profits, or reserved funds, less 10 per cent. of capital.....	1,317,315 04
Rate of dividend last year, or last annual dividend, and when declared, 16 per cent.....	
Indebtedness in detail, as follows, viz:	
Bonds.....	
General indebtedness, deposits.....	10,739,505 13
Other indebtedness, reserve for taxes.....	1,000 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

147 Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
21	63	43–44	$.....	526–'28 Flushing Ave.
1	24	20 and 35	.....	204 Columbia Heights.
5	40	55–56	.....	63–65 Duffield St.
4	30	34	.....	317–319 Washington St.
25	31	56	.....	746 Gates Ave.

State the amount actually paid for real estate owned by your company..... $128,111 21
State also actual value at which such real estate is carried on your company's books as an asset..... Do.
Amounts invested in the stocks of other corporations which are taxed upon their capital.....
Amounts invested in U. S. securities 1,493,305 24
Amounts invested in city of Brooklyn non-taxable bonds 1,133,000 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or place of transacting the financial business of the said corporation is situated in the 1st ward of the city of Brooklyn, at No. 177–179 Montague street.

CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Frederick C. Colton, the secretary of the said corporation,
148 being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

FREDERICK C. COLTON.

Sworn to before me this 20th day of May, 1897.

B. G. NEFF,
Pres., Assessor.

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the — of May, inst.

EXHIBIT 2.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Franklin Trust Company, showing its condition for the purpose of assessment on the 19th day of May, 1897.

Total gross assets, including real estate, less 10 per cent. on capital..... $6,894,538 00

Of the above, $487,986.00 is in real estate.
Of the above, $6,446,552.00 is in personal property.

149 Capital stock actually paid in, or secured to be paid in 1,000,000 00

Total amount of surplus profits, or reserved funds, less 10 per cent. capital	782,981 00
Rate of dividend last year, or last annual dividend, and when declared, 8 per cent. quarterly	

Indebtedness in detail, as follows, viz:

Accrued interest due depositors	21,344 00
General indebtedness, deposits and certified checks	5,090,172 00
Other indebtedness, uncalled-for dividends	40 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable properties or securities, or for the purpose of evading taxation? No.

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers).

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
1	60	19–20	$270,000	Banking building is property cor. Clinton and Montague streets.

	State the amount actually paid for real estate owned by your company	$487,986 00
	State also actual value at which such real estate is carried on your company's books as an asset	487,986 00
	Amounts invested in the stocks of other corporations which are taxed upon their capital	549,645 00
150	Amounts invested in U. S. securities	647,800 00
	City of Brooklyn securities	374,440 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or place of transacting the financial business of the said corporation is situated in the 1st ward of the city of Brooklyn, at Nos. 164 and 166 Montague street.

CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Jas. R. Cowing, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

JAS. R. COWING.

Sworn to before me this 20th day of May, 1897.

CHAS. W. CHESHIRE,
Notary Public.

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the — of May, instant.

EXHIBIT 3.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

151 Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Manufacturers' Trust Co., showing its condition for the purpose of assessment on the 1st day of May, 1897.

Total gross assets	$3,720,059 66
Of the above none is in real estate.	
Of the above $3,720,059.66 is in personal property.	
Capital stock actually paid in	500,000 00
Total amount of surplus and profits	564,569 94
	$1,064,569 94
Less 10 per cent. on capital	50,000 00
Rate of dividend last year, or last annual dividend, and when declared, 6 per cent., $30,000	1,014,569 94
Indebtedness in detail as follows, viz:	
Bonds	None.
General indebtedness, due depositors	$2,616,669 79
Other indebtedness, interest due depositors and unearned	18,278 37
Expenses accrued	1,130 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation?

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

152

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
				None.

State the amount actually paid for real estate owned by your company	None.
State also actual value at which such real estate is carried on your company's books as an asset	None.
Amounts invested in the stocks of other corporations which are taxed upon their capital	$193,327 96
Amounts invested in U. S. securities and city of Brooklyn bonds	986,553 39
	$1,179,781 35

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of Brooklyn, at No. 198 Montague street, Brooklyn, N. Y.

CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Frank L. Sniffen, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

FRANK L. SNIFFEN, *Secretary.*

Sworn to before me this 13th day of May, 1897.

CHARLES W. CHESHIRE,
Notary Public.

153 ☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the 21st of May, instant.

EXHIBIT 4.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the People's Trust Co., showing its condition for the purpose of assessment on the 15th day of May, 1897.

Total gross assets, including real estate, less 10 per cent. of capital	$8,016,102 01
Of the above, $60,000 is in real estate.	
Of the above, $7,956,102.01 is in personal property.	
Capital stock actually paid in or secured to be paid in	1,000,000 00
Total amount of surplus profits or reserve funds, less 10 per cent. of capital	1,033,780 47

Rate of dividend last year, or last annual dividend, and when declared, 8 per cent.: declared quarterly.

Indebtedness in detail, as follows, viz:

	Accrued interest on deposits	17,950 10
154	General indebtedness, due depositors	6,091,081 12
	Other taxes accrued	750 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
1	63	41	$15,000	
1	63	42	15,000	

State the amount actually paid for real estate owned by your company.....	$60,000
State also actual value at which such real estate is carried on your company's books as an asset.....	60,000
Amounts invested in the stocks of other corporations which are taxed upon their capital.....	220,920
Amounts invested in U. S. securities.....	1,795,000
City of Brooklyn exempt bonds.....	837,350

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of Brooklyn, at No. 172 Montague street.

155 CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Edward Johnson, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

EDWARD JOHNSON.

Sworn to before me this 20th day of May, 1897.

CHAS. W. CHESHIRE,
Notary Public.

☞The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the 21st of May, instant.

EXHIBIT 5.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Hamilton Trust Co., showing its condition for the purpose of assessment on the first day of May, 1897.

Total gross assets, including real estate.....	$5,320,631 52
Of the above, $15,113.64 is in real estate.	
156 Of the above, $5,305,517.88 is in personal property.	
Capital stock actually paid in, or secured to be paid in.....	500,000 00

Total amount of surplus profits, or reserved funds....	503,385 15
Rate of dividend last year, or last annual dividend, and when declared, Feb. 1, May 1, Aug. 1, Nov. 1..	40,000 00

Indebtedness in detail, as follows, viz:

Bonds.....	
General indebtedness due depositors.....	4,316,996 37
Other indebtedness, State taxes.....	250 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation?

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
9	81	69	$2,800	354 Prospect place.
		70	2,800	356 " "
		71	2,800	358 " "
		72	2,800	360 " "

State the amount actually paid for real estate owned by your company.....		$15,113 64
State also actual value at which such real estate is carried on your company's books as an asset.		15,113 64
157	Amounts invested in the stocks of other corporations which are taxed upon their capital.....	189,214 40
Amounts invested in U. S. securities.....		235,500 00
Amounts invested in Brooklyn bonds.....		597,100 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of Brooklyn, at No. 191 Montague St.

CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Jos. B. White, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

JOS. B. WHITE.

Sworn to before me this 17th day of May, 1897.

JAS. McLEER, *Assessor.*

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the — of May, inst.

158 EXHIBIT 6.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Nassau Trust Co., showing its condition for the purpose of assessment on the 28th day of May, 1897.

Total gross assets, including real estate (after deducting $\frac{1}{10}$ of capital).....		$709,120 00
Of the above, $00 is in real estate.		
Of the above, $709,120 is in personal property.		
Capital stock actually paid in or secured to be paid in.....	$500,000 00	
Total amount of surplus profits or reserved funds		
Less $\frac{1}{10}$ cap..... (259,120 50,)	209,120 00	
		709,120 00
Rate of dividend last year or last annual dividend, and when declared, February 1 and August 1; 6 per cent. per annum.....		

Indebtedness in detail, as follows, viz:

Bonds.....
General indebtedness.....
Other " .....

159 Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation?

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

Ward.	Block.	Lot.	Assessed valuation.	Remarks.

State the amount actually paid for real estate owned by your company..... $

State also actual value at which such real estate is carried on your company's books as an asset.....

Amounts invested in the stocks of other corporations which are taxed upon their capital..... $2,000 00

Amounts invested in U. S. securities, and non-taxable municipal bonds..... 700,759 00

702,759 00

86,361 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or the place of transacting the financial business of the said corporation is situated in the thirteenth ward of the city of Brooklyn, at No. 101 Broadway.

160 CITY OF BROOKLYN, } ss.:
County of Kings, }

I, John Truslow, the second vice-president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

JOHN TRUSLOW.

Sworn to before me, this 28th day of May, 1897.

CHAS. W. CHESHIRE,
Notary Public.

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the 21st of May, instant.

EXHIBIT 7.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Kings County Trust Company, showing its condition for the purpose of assessment on the 19th day of May, 1897.

Total gross assets, including real estate.....		$1,163,000 00
161	Of the above, $210,000 is in real estate. Of the above, $953,000 is in personal property.	
Capital stock actually paid in, or secured to be paid in		500,000 00
Total amount of surplus profits, or reserved funds...		713,000 00
Rate of dividend last year, or last annual dividend, and when declared; 8 per cent.....		40,000 00

Indebtedness in detail, as follows, viz:

Bonds.....	
General indebtedness.....	1,213,000 00
Other indebtedness, less 10 per cent. on capital.....	50,000 00
	$1,163,000 00

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof. (Describe same particularly by ward, block, and lot numbers.)

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
3	40	4	$130,000	

State the amount actually paid for real estate owned by your company.....	$201,600 00
State also actual value at which such real estate is carried on your company's books as an asset.	210,000 00
162 Amounts invested in the stocks of other corporations which are taxed upon their capital.	193,500 00
Amounts invested in U. S. securities.....	400,000 00
Kings County, Brooklyn and New York City bonds.	543,000 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

The principal office or the place of transacting the financial business of the said corporation is situated in the third ward of the city of Brooklyn, at Nos. 342, 344, 346 Fulton street.

CITY OF BROOKLYN, } ss.:
County of Kings, }

I, Thomas Blake, the assistant secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

THOMAS BLAKE.

Sworn to before me this 19th day of May, 1897.

JAS. McLEER, *Assessor.*

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the — of May, instant.

163 EXHIBIT 8.

City of Brooklyn, department of assessment, Municipal Department building, room No. 20.

☞ Please state the corporate title in full.

Statement made and delivered to the board of assessors of the city of Brooklyn, county of Kings and State of New York, for and in behalf of the Long Island Loan and Trust Company, showing its condition for the purpose of assessment on the — day of May, 1897.

Total gross assets, including real estate.....	$3,795,947 97
Of the above, $150,000 is in real estate.	
Of the above $3,645,947.97 is in personal property.	
Capital stock actually paid in, or secured to be paid in.....	500,000 00
Total amount of surplus profits, or reserved funds....	411,378 26
Rate of dividend last year, or last annual dividend, and when declared, 8 per cent.....	
Indebtedness in detail, as follows, viz:	
Bonds.....	
General indebtedness.....	2,884,569 71
Other indebtedness.....	

Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

164 Assessed value of real estate owned by said corporation within the city of Brooklyn and outside of the corporate limits thereof (describe same particularly by ward, block and lot numbers).

Ward.	Block.	Lot.	Assessed valuation.	Remarks.
1	62	29	$56,400	
1	62	14	18,000	
23	34	56	7,000	
23	34	57	7,000	
23	34	59	7,000	
23	34	60	7,000	
23	110	104	6,300	
23	110	102	6,300	

State the amount actually paid for real estate owned by your company	$155,058 15
State also actual value at which such real estate is carried on your company's books as an asset	150,000 00
Amounts invested in the stocks of other corporations which are taxed upon their capital	178,575 00
Amounts invested in U. S. securities	488,250 00
Amounts invested in city of Brooklyn non-taxable bonds	100,000 00

(If the capital of the company is worth less than its face value, state the actual value and give the facts under oath which will justify such estimate of its value.)

.....

The principal office or the place of transacting the financial business of the said corporation is situated in the 1st ward of the city of Brooklyn, at No. 203 Montague street.

CITY OF BROOKLYN, } ss:
County of Kings, }

I, Fred'k T. Aldridge, the secretary of the said corporation,
165 being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

FRED'K T. ALDRIDGE.

Sworn to before me this 20th day of May, 1897.

W. J. TAYLOR, *Assessor.*

☞ The assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

Please complete and return the above statement so that it may reach this office not later than the — of May, instant.

EXHIBIT 9.

$—. BROOKLYN, N. Y., —— —, 189-.

— after date, and upon return of securities given, — promise to pay to the National City Bank of Brooklyn, at said bank, — dollars, for value received, having deposited with said bank, as collateral security for the payment of this note, or any other liabilities of —— —— that may be hereafter contracted or may become due to said bank, — granting to said bank the right to call for additional security, should the same decline in value; and on failure to respond, this obligation shall become due and payable on demand. And

hereby giving to said bank full power to sell, assign, and deliver said collateral security, or any substitutes therefor or any additions thereto, at any board of brokers, or at public or private sale, at the option of said bank, without advertisement or notice, or the non-performance of this promise, or the non-payment of any of the liabilities above mentioned, or at any time thereafter; granting to said bank the right to purchase said securities at such brokers' board or public sale. And after deducting all costs and expenses of sale, to apply the residue of the proceeds of such sale to the payment of this obligation and the aforesaid liabilities, returning the surplus to the undersigned; and in case of any deficiency, promising to pay to said bank the amount thereof, forthwith after such sale with legal interest.

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——— ———.

EXHIBIT 10.

8—. BROOKLYN, N. Y., ——— —, 189–.

— after date without grace for value received, — promise to pay to the Manufacturers' Trust Company, or order, at the office of said company, in the city of Brooklyn, — dollars, with interest at the rate of — per cent. per annum; having pledged herewith as collateral security, with authority as hereinafter stated, to sell at private or public sale, in the non-performance of this promise, or any of its conditions the following securities, viz:

In case of depreciation of said securities, or either of them, or any which may be hereafter pledged for this loan, a payment shall forthwith be made on account, or additional satisfactory securities given, so that the market value of the collateral shall always be at least — per cent. more than the amount unpaid on this note. In case of failure so to do this note shall forthwith become due and payable anything herein contained to the contrary notwithstanding, with full right, power and authority to the holder or holders hereof, without further demand or notice, to sell, assign and deliver the whole or any part of such securities, substitutes, or additions, at any broker's board or at public or private sale, at their option, at any time or times thereafter, without advertisement or notice to — and also with the right to become purchasers thereof at such sale or sales, freed and discharged from any equity of redemption; all interest and legal or other costs, charges and expenses for collection, sale and delivery to be deducted from the proceeds of such sale and the residue applied on the liability or indebtedness under this note and agreement; the overplus, if any, to be returned to the un-signed. If there be any deficiency, the undersigned shall forthwith pay the same. All the provisions of this instrument shall inure to the benefit of the holders or assigns thereof.

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And it is further agreed and understood that if recourse is had to the above-mentioned securities, or substitutes therefor, or addition

thereto, any excess of collateral upon this note is applicable to any other note or claim held against — by said company.

—— ——,

Address, —— ——.

168 EXHIBIT 11.

L. O. M. F. E. C., referee. B.

Address reply to "Comptroller of the Currency," Washington, D. C.

C. TREASURY DEPARTMENT,
E. S. OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *April* 13, 1898.

Messrs. Peck & Field, attorneys-at-law, 215 Montague street, Brooklyn, New York.

GENTLEMEN: Your letter of the 8th instant is received, and you will find below a statement giving the desired information regarding national banking associations established in your city:

Names of banks.	Date of org. certificate.	Date of compt. certificate.	Date of extension.
Nassau Nat. Bank of Brooklyn	Dec. 2, 1864	Dec. 29, 1864	Dec. 2, 1884
First Nat. Bank of Brooklyn	Dec. 23, 1864	Mar. 21, 1865	Dec. 23, 1884
Manufacturers' Nat. Bank of Brooklyn	June 27, 1865	July 15, 1865	June 27, 1885
Nat. City Bank of Brooklyn	Aug. 1, 1865	Aug. 29, 1865	Aug. 1, 1885
Sprague Nat. Bank of Brooklyn	May 22, 1883	July 13, 1883	

As you will observe, it is customary to extend the corporate existence of a bank twenty years from the date of the organization certificate, and not the certificate of the Comptroller of the Currency authorizing the bank to begin business.

Very respectfully, CHARLES G. DAWES,
Comptroller.

169 EXHIBIT 12.

$—. BROOKLYN, N. Y., ——, 189–.

— *after date, and upon return of securities given,* — *promise to* pay at the First national bank, to the order of —— —— the sum of — dollars, with interest for value received, having deposited with said bank as collateral security: —, with authority to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice; applying the net proceeds to the payment of this note, or any liability to said bank, including interest, and accounting to —— —— for the surplus, if any. In case of deficiency, — promise to pay to said First national bank, the amount thereof, forthwith after such sale, with legal interest.

—— ——.

170 EXHIBIT 1.

F. E. C.

The Assessment of Bank

In the following table is shown the capital, book values and assessable values of rolls of all the banks assessed in the city of Brooklyn for the year 1897. Banks

Ward in which ass'd.	Name of bank.	Capital stock.			Gross or book values.	
		Par value.	No. of shares.	Amount.	Per share.	Aggregate.
23	Bedford	100	1,500	$150,000	$175.50	$263,262
16	Broadway	100	1,000	100,000	213.00	213,044
1	Brooklyn	50	6,000	300,000	78.06	468,353
8	Eighth Ward	100	1,000	100,000	133.00	133,056
22	Fifth Avenue	100	1,000	100,000	151.27	151,276
13	First National*	100	3,000	300,000	417.74	1,253,226
4	Fulton	40	5,000	200,000	76.62	383,092
27	German-American	50	2,000	100,000	54.65	109,310
6	Hamilton	100	1,000	100,000	134.23	134,231
1	Kings County	100	1,500	150,000	158.60	237,900
1	Long Island	50	8,000	400,000		
13	M'factur's' Nat.*	30	8,400	252,000	76.31	640,990
1	Mechanics'	50	10,000	500,000	96.21	962,122
17	Mec. and Traders'	100	1,000	100,000	287.93	287,933
1	Nassau National*	100	3,000	300,000	293.06	879,183
3	National City	50	6,000	300,000	158.53	951,193
14	North Side	100	1,000	100,000	224.96	224,961
28	People's	50	2,000	100,000	101.29	202,589
3	Schermerhorn	100	1,000	100,000	158.05	158,054
3	Sprague National*	100	2,000	200,000	207.74	415,497
17	17th Ward	100	1,000	100,000	181.38	181,385
26	26th Ward	100	1,000	100,000	152.24	152,241
9	Union	50	2,000	100,000	76.26	152,519
20	Wallabout	100	1,000	100,000	133.00	133,018
	Totals and average			$4,352,000		$8,688,435

Sum

Assessed values

National banks	$3,129,600
State banks	3,365,500
Total	$6,495,100

June 27, 1898.

Shares for the Year 1897.

the bank stock sworn off and the amounts thereof retained upon the assessment-marked with * are national banks. All the others are State banks.

Values at which assessed.		Amounts sworn off and retained on rolls.		Percentage of total sworn off.	Assessed valuation real estate.
Per share.	Total.	Remaining.	Sworn off.		
$122	$183,000	$130,784	$52,216	.29	$34,800
142	142,000	82,644	59,356	.42	25,000
55	330,000	308,715	21,285	.06	80,000
109	109,000	81,423	27,577	.25	11,600
123	123,000	67,204	55,796	.45	7,500
336	1,008,000	770,704	237,296	.24	59,800
58	290,000	156,348	133,652	.46	51,300
52	104,000	60,060	43,940	.42	.....
109	109,000	64,180	44,820	.41	10,000
133	199,500	105,735	93,765	.47	200
8	64,000	62,960	1,040	.02	.....
54	453,600	335,988	117,612	.26	9 ,000
50	500,000	386,750	113,250	.23	319,950
215	215,000	107,368	107,632	.50	39,000
236	708,000	582,448	125,552	.18	.....
98	588,000	449,564	138,436	.24	231,000
182	182,000	113,204	68,796	.38	15,000
80	160,000	48,360	111,640	.70	15,000
141	141,000	141,000	.....	.....	.....
186	372,000	90,254	281,746	.76	.....
165	165,000	36,610	128.390	.78	.....
92	92,000	40,020	51,980	.56	39,500
73	146,000	46,720	99,280	.68	.....
111	111,000	76,479	34,521	.31	.....
.....	$6,495,100	4,345,522	$2,149,578	.33	$1,035,650

mary.

Sworn off.	Retained on roll.
$900,372	$2,228,958
1,249,206	2,116,564
$2,149,578	$4,345,422

172 *Opinion of the Appellate Division, Second Department, on Affirming Order of Mr. Justice Hirschberg.*

Supreme Court, Appellate Division, Second Department.

In the Matter of the Application of JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Appellants,

against

BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Appeal from an order of the special term confirming an assessment made in the city of Brooklyn upon the shares of stock of the First national bank.

Frank Harvey Field (Seymour D. Thompson with him on the brief), for the appellants.

William J. Carr, for the respondents.

WOODWARD, *J.*:

A writ of certiorari issued in the proceeding now under consideration, to review the assessment upon the shares of the First
173 National Bank of Brooklyn, the relators urging before the referee, who was appointed to take proof and report his opinion, that the State of New York has no power to assess shares of stock in national banks except as such power is granted by section 5219 of the United States Revised Statutes, and that section 24 of the tax law of 1896, under which bank shares are assessed, is unconstitutional, because it does not permit the shareholders in a national bank to deduct from the value of their shares a proportionate amount of the non-taxable securities owned by the bank itself. Unless this is done, the relators contend, there is an inequality in the method of taxing shareholders of national banks as compared with other owners of "moneyed capital in the hands of individual citizens," as provided by the United States Statutes. The evidence before the learned referee was devoted principally to an effort to show that the trust companies of the borough of Brooklyn, which transact business of a banking character in connection with their other duties, were bearing a less portion of the public burdens than the national banks generally, and the First national bank in particular. The learned referee made a report in which he reached the conclusion that the First national bank had been wronged in the assessment as to certain items, but the special term of this court refused to follow the referee, and modified the report, sustaining the original assessment, and, as modified, confirming the same. From the order of affirmance the relators come to this court urging with much force that the order should be reversed upon the grounds presented to the referee and the court below.

It does not seem necessary at this time to enter into a detailed consideration of the facts presented to the referee, and which are

before us in the record, because the real question at issue is
174 one of law rather than of fact. The assessment was made substantially in compliance with the provisions of section 24 of the tax law of 1896, and the question before this court is not whether the national banks of Brooklyn are paying more taxes than the trust companies in the same locality, but whether the laws of the State of New York, under which these institutions are taxed, are valid. The power of Congress to pass a national banking act for the purpose of carrying out the powers delegated to that body by the Constitution is not open to question, nor is there any doubt that the only authority of the State of New York to levy a tax upon these banking institutions is derived from section 5219 of the United States Revised Statutes, which provides as follows:

"SECTION 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

It is conceded on the part of the relators that the stock of the First national bank was assessed upon the same principle
175 applied in the assessment of the stock of the State banks doing business in their immediate vicinity, and that this was done under the provisions of sec. 24 of the tax law of 1896. In order to pronounce this provision of the law invalid we must, therefore, convict the legislature not alone of hostility to the national banks, but of hostility toward its own creations; we must reach the conclusion that the State of New York is seeking by an exercise of its taxing power to advance one class of moneyed corporations at the expense of another, both of which have been created by the legislature and both of which are engaged, presumptively, in promoting the interests of the people. There are no presumptions in favor of this idea, and there is no evidence in the case to show that any of the State institutions have ever complained of an inequality in taxation. It is true, of course, that the State banks gain no rights under the Federal statute, and they would have no right to complain in the present proceeding. But the two classes of moneyed corporations have grown up in this State side by side, the one taxed on its share stock the same as national banking institutions, the other upon its capital stock, less the statutory exemptions. There has been no protest against the practice which has excited any considerable public discussion, or engaged the legislature in a degree calculated

to call attention to the question. Section 24 of the tax law is the result of numerous efforts to conform the laws of this State to the requirements of the Federal statutes in reference to the taxation of national banks and the evidences of debt issued by the National Government during the War of the Rebellion, and a reference to the decisions of the courts in bringing about the various modifi-
176 cations of the statute law of this State will aid us in understanding the question presented on this appeal.

Under the provisions of the act of Congress of February 25, 1862, in relation to the issue of bonds for raising revenues for the conduct of the war, it was provided that "all stocks, bonds and other securities of the United States, held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under State authority." The Bank of Commerce of the City of New York had invested its capital to the extent of over $8,000,000 in the bonds and other securities of the United States, and the assessors of that city insisted upon levying a tax not upon the bonds, as they contended, but upon the bank capital. The assessment was reviewed by certiorari, the court holding that it was not within the power of the State to tax these securities of the United States, whether in the hands of individuals or of banking corporations as a part of their capital. (Bank of Commerce *vs.* New York City, 2 Black, 620.) In April, 1863, the legislature, for the purpose, apparently, of avoiding this decision of the United States Supreme Court, enacted that "all banks, banking associations, etc., shall be liable to taxation on a valuation equal to the amount of their capital stock paid in, or secured to be paid in, and their surplus earnings, etc., in the manner now provided by law," etc. This statute soon after came under review by certiorari, an attempt having been made to assess taxes upon the banks holding the securities of the Federal Government as a portion of their capital, and it was condemned upon the same reasoning as in the Bank of Commerce case. (Bank tax case, 2 Wallace, 200.) "The legislature," say the court in the case cited at page 209, "well knew the peculiar system under which these
177 institutions were incorporated, and the working of it; and, when providing for a tax on their capital at a valuation, they could not but have intended a tax upon the property in which the capital had been invested," and as this operated to tax the securities of the United States, the statute was declared invalid.

These decisions were made before the adoption of the act of February 25, 1863, and amended by the act of June 3, 1864; they were all in reference to State banks, which held the securities in the same manner as the trust companies now hold them, and as so held were declared to be not subject to taxation. Section 41 of the act of 1864, after making provision for certain taxes to be paid to the United States by the national banking associations created by the statute, provides that "nothing in this act shall be construed to prevent all the shares in any of said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority, at the place where such bank is

located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," provided "that the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State where such association is located." On the 9th of March, 1865, the legislature of this State enacted "An act, enabling the banks of this State to become associations for the purposes of banking, under the laws of the United States," in which it was provided by section 10 that "all the shares in any of the said banking associations, organized
178 under the * * * act of Congress, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate or corporation, in the assessment of taxes in the town or ward where such banking association is located, and not elsewhere, whether the holder thereof reside in such town or ward, or not; but not at a greater rate than is assessed upon other moneyed capital in the hands of the individuals of this State, provided that the tax so imposed upon such shares shall not exceed the par value thereof," etc.

This act laid no tax upon the shares of stock in State banks, and when the question was presented to the court in Van Allen *vs.* The Assessors (3 Wallace, 573), the court pointed out that "one of the limitations in the act of Congress is, 'that the tax so imposed under the laws of any State upon the shares of the associations authorized by this act, shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.' The enabling act of the State contains no such limitation." The court unanimously held that because of this defect in the statute it was void. The opinion of the court, however, declared this to be of but small consequence, as it could easily be remedied by the legislature; but it said that the "main and important question involved, and the one which has been argued at great length and with eminent ability, is whether the State possesses the power to authorize the taxation of the shares of these national banks in the hands of stockholders whose capital is wholly vested in stock and bonds of the United States?" It was held that the State had this power, and in discussing the further suggestion that the act of Congress in redelegating the power to
179 tax these associations was unconstitutional, the court say:

"But this suggestion is scarcely well founded; for were we to admit, for the sake of argument, this to be a tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and new privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds; and if Congress possessed the power to grant these new rights and new privileges, which none of the learned counsel has denied, and which the whole argument assumes, then we do not see but the power to annex the conditions is equally clear and indisputable. * * * The interest of the shareholder entitles him to participate in the net profits earned by the bank in the em-

ployment of its capital, during the existence of its charter, in proportion to the number of his shares; and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the States, under the limitations prescribed, as will be seen on referring to it." In replying to the suggestion that the statute contemplated the taxation only of such part of the share stock of national banks as should not be invested in the securities of the United States, the court say: "If Congress had intended any such discrimination, it would have been an easy matter to have said so. Certainly, so grave and important a change in the use of this term, if so intended, would not have been left to judicial construction."

In April, 1866, to conform the statute to the decision in
180 Van Allen *vs.* The Assessors (*supra*), the legislature of this State enacted that "no tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States; but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder resides in said place, town, or ward or not; but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this State." The validity of an assessment under this statute soon came before the courts (People *vs.* The Commissioners, 4 Wallace, 244), and it was urged that an assessment upon the shares of the relator in the National Bank of Commerce of New York was invalid because the capital of the bank was invested in the bonds of the United States, and no reduction in the valuation had been made on account of these non-taxable securities. The court followed Van Allen *vs.* The Assessors upon this proposition, and upon the contention that the shares were assessed at a higher rate than other moneyed capital in the hands of individual citizens, because the latter were allowed to deduct the amount of their non-taxable securities, the court say: "The answer is, that upon a true construction of this clause of the act, the meaning and intent of the law-makers were, that the rate of taxation of the shares should be the same, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is,
no greater proportion or percentage of tax in the valuation of the
181 shares should be levied than upon other moneyed taxable capital in the hands of the citizens." In this the court recognized, what was pointed out in the Van Allen case, that there was a distinct difference between the individual citizen who had purchased the bonds as an investment, losing the further use of his money, and the stockholders of the national banks, who not only owned the bonds as an investment, but were allowed to use them as capital to reap the

profits of banking. In People *vs.* Commissioners (*supra*) the commissioners in their return to the writ of certiorari stated that insurance companies, created under the laws of the State of New York, and doing business in the city of New York (which are moneyed corporations—section 3, chap. 35, General Laws)—were respectively assessed upon the balance of their capital and surplus profits, liable to taxation, after deducting therefrom such part as is invested in United States securities. It was objected, as in the case at bar, that the taxation of the relator was illegal, on account of this deduction to the insurance companies—it being a departure from the rate of assessment prescribed. "The answer is," say the court, "that this clause does not refer to the rate of assessments upon insurance companies as a test by which to prevent discrimination against the shares; that is, confined to the rate of assessments upon moneyed capital in the hands of individual citizens. These institutions are not within the words or the contemplation of Congress; but even if they were, the answer we have already given to the deduction of these securities in the assessment of the property of individual citizens is equally applicable to them. These companies are taxed on their capital, and not on the shareholder, at the same rate as other personal property in the State. There is not much danger to
182 be apprehended of a discriminating tax in their favor, prejudicial to the rights of property of the citizen, and, of course, to the rights of the shareholders in these national banks, who stand on the same footing."

We have thus followed the development of the statutory law of this State to a point where it is judicially determined to have been in harmony with the Federal statute in reference to the taxation of the shares of national banks, and while both the State and Federal statutes have been changed in their language since that time, neither of them has been altered in such a manner as to affect the question presented on this appeal, and it was distinctly held in the case of Mercantile Bank *vs.* New York (121 U. S., 138) that the method of taxing trust companies upon their capital, allowing them the exemptions provided by the Federal statutes upon their United States securities, was not in conflict with the provisions of section 5219 of the Revised Statutes of the United States. A careful reading of that case, in the light of prior decisions, will, we believe, sustain the decision of the court below, and justify this court in affirming the order appealed from.

It may, not, in view of the importance of this question, be out of place to suggest that the statute under which the trust companies are organized does not compel the capital to be invested in United States bonds; it may be invested in "bonds and mortgages on unincumbered real property in this State worth at least double the amount loaned thereon, or in the stocks or bonds of this State, or of the United States, or of any county or incorporated city of this State duly authorized by law to be issued." If the capital of the trust companies should be invested in bonds and mortgages, or other securities not exempt from taxation, there would be no inequality in the prem-
183 ises, and as they are not allowed the privilege of issuing notes to be circulated as money upon the security of their United

States bonds, which is the real justification for the taxation which is assessed upon the shareholders of the national banks, we fail to find in the record any evidence of such a discrimination against the national banks as would justify us in holding that the law under which the trust companies operate, and the statutes under which they are taxed, can have the effect of invalidating an otherwise valid statute. The fact that in a given instance, by reason of an exercise of a discretion as to the particular kind of securities purchased, a trust company may have a real or imaginary advantage over investors in the shares of a national bank, is not a sufficient foundation for declaring an assessment invalid. It is essential, if the law of the State is to be declared invalid under the limitations expressed in the United States statute, that the enactment of the legislature shall evidence a disposition to evade or override the spirit of the limiting statute, and this is clearly not the case where it provides for equal taxation upon its own State banks, and where it does not require its trust companies, which it may be conceded, come into a limited competition with the investors in the shares of national banks, to invest their capital in such a way as to necessarily exempt them from taxation upon a portion of their capital stock. If the State refused to allow its trust companies to invest in United States securities there might be a far greater cause for grievance. Trust companies are not organized primarily for banking purposes; they are designed for other purposes, as pointed out in the Mercantile Bank case, and it was never the purpose of the Federal Government
184 to interfere with the policy of the State in reference to the formation and development of such corporations as it should judge expedient, even though it should be found necessary to invest them with some of the powers of banking associations as an inducement to perform the other duties and obligations imposed by the State. As was said in the Mercantile Bank case in reference to savings banks, "however large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

But it is urged by the relators that in exempting an amount equal to ten per cent. of the capital of a trust company from the surplus which is returned for the purposes of taxation (section 31, tax law of 1896), the law operates unequally upon the national bank. This exemption, which is not confined to trust companies or moneyed institutions, but is allowed to all corporations, was given by the statute of 1853 (chapter 654), and has ever since existed in the tax laws of this State. It was dictated by the belief that some reservation or accumulation of profits was necessary in the case of corporations to guard against losses which otherwise might impair their capital stock. It is not in any sense a discrimination in favor of moneyed corporations. It has no application to the case of moneyed capital in the hands of individuals, which is the test prescribed by the

act of Congress for the validity of any State tax law; and if a stockholder in a national or State bank does not get the
185 advantage of the exemption, it is solely for the same reason that is applicable to the cases where the corporations own United States bonds; that is to say, it is not the corporation which is taxed but the individual stockholder. Nor does it necessarily follow that in fact a discrimination is made by the statute between corporations and individuals. It may well be that a corporation has surplus assets in excess of ten per cent. of the capital, and thus is subject to taxation on such surplus, and yet the business of the corporation may be of such a precarious or hazardous character that the market value of the shares of stock is even less than par. It is often true, especially in the case of insurance companies or banks, that the market value of the shares of stock is not equal to the book value of the assets of the corporation. In such a case the shareholders in the corporation would be benefited by being taxed on the value of their stock instead of having the corporation itself taxed on its property.

The order appealed from should be affirmed, with $10 costs and disbursements.

186 *Order of the Appellate Division, Second Department, Affirming the Order of Mr. Justice Hirschberg.*

At a term of the appellate division of the supreme court held in and for the second judicial department at the borough of Brooklyn, on the 9th day of January, 1900.

Present: Hon. Wm. W. Goodrich, presiding justice; Hon. Willard Bartlett, Hon. Edward W. Hatch, Hon. John Woodward, justices.

In the Matter of the Application of JOHN G. Jenkins *et al.*, Stockholders of the First National Bank of Brooklyn, for a Writ of Certiorari, Appellants, *against* BARZILLAI G. NEFF ET AL., Constituting the Board of Assessors of the City of Brooklyn, Respondents.	Order on Appeal from Order.

The above-named John G. Jenkins and other stockholders of the First National Bank of Brooklyn, the relators in this proceeding, having appealed to the appellate division of the supreme court,
from an order of the supreme court, entered in the office of
187 the clerk of the county of Kings on the 6th day of October, 1899, granting respondents' motion that their exceptions be sustained and the exceptions of the petitioners be overruled. That the report of the referee be modified, etc., and as modified, confirmed, etc., and the said appeal having been argued by Mr. Frank Harvey Field, of counsel for the appellants, and by Mr. William J. Carr, of counsel for the respondents, and due deliberation having been had thereon, and the court having unanimously decided that the findings of fact are supported by the evidence,

It is hereby ordered, that the order so appealed from be, and the same is hereby affirmed, with $10 costs and disbursements.

Enter.

WM. W. GOODRICH, *P. J.*

188 *Notice of Appeal to the Court of Appeals.*

Supreme Court, Appellate Division, Second Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* John G. Jenkins *et al.*, Stockholders of the First National Bank of Brooklyn, Appellants, *against* BARZILLAI G. NEFF ET AL., Constituting the Board of Assessors of the City of Brooklyn, Respondents. } Appeal from Order.

Please take notice, that the relators appeal to the court of appeals from the order of the appellate division of the supreme court for the second department herein entered in the office of the clerk of the county of Kings, on the 9th day of January, 1900, and from every part of said order.

Dated Brooklyn, city of New York, N. Y., January 16, 1900.

FRANK HARVEY FIELD,
Attorney for Appellants, 215 Montague Street, Borough of Brooklyn, City of New York, N. Y.

To the clerk of the county of Kings.

Hon. John Whalen, corporation counsel of the city of New York, attorney for respondents.

189 It is hereby stipulated that the foregoing are true copies of all of the original papers which were used in the court below and specified in the order, and of the whole thereof.

Dated April 3, 1900.

FRANK HARVEY FIELD,
Attorney for Appellant.
JOHN WHALEN,
Corporation Counsel, Attorney for Respondent.

190 Court of Appeals of the State of New York.

JOHN G. JENKINS and Others, Shareholders of the First National Bank of Brooklyn, Relators, Appellants,
vs.
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Defendants, Respondents.

John Whalen, corporation counsel (William J. Carr, of counsel), for respondents.

Frank Harvey Field, attorney for relators, appellants (Seymour D. Thompson, of counsel).

BARTLETT, *J.*:

This is a proceeding by certiorari brought by John G. Jenkins and 140 other stockholders of the First National Bank of Brooklyn against the defendants, constituting the board of assessors of the city of Brooklyn, to review and correct an assessment for the year 1897.

There are but two principal questions presented which need be considered.

The first relates to the assessment on the shares of stock under section 24 of the tax law. This section provides, among other things, that in making an assessment there shall be deducted from the value of the shares a sum which bears the same proportion to such value as the assessed value of the real estate of such bank or banking association bears to the capital stock thereof.

After the return to the writ herein the case was sent to a referee to take evidence and report to the court, with his findings of fact and conclusions of law.

191 The referee found as a conclusion of law that the board of assessors failed to deduct from the gross assets or value of the capital of the bank the sum of $93,000, the actual value of its real estate as carried on the books, and deducted only the sum of $50,000; that the remaining $43,000 should be deducted, which will reduce the assessment $14.33 a share.

The special term disagreed with the referee on this point, and held that the assessment as imposed by the defendants was in compliance with the terms of the statute.

The appellate division affirmed the special term on this point without discussion. The reasoning of the learned judge who wrote the opinion at special term is, in substance, that section 12 of the tax law requires that the capital stock shall be assessed at its actual value after deducting the assessed value of the real estate, and section 24 of the same law provides that in assessing shares of bank stock there shall be deducted from the value such a proportionate sum as the assessed value of the real estate bears to the value of the shares.

It is undisputed that the real estate was assessed at $50,000, and that sum was deducted from the actual value of the shares. It is, however, urged that the actual value of the shares was ascertained by putting in the real estate at its full value of $93,000, as carried

on the books of the bank. The argument of the appellants' counsel is that this results in a double taxation.

We agree with the court below that such is not the fact. In order to reach the actual value of the shares it was necessary to ascertain the total value of the assets of the bank, and from that was to be deducted the assessed value of the real estate, which was done.
192 In People *ex rel.* Equitable Gas Light Co. *v.* Barker (144 N. Y., 94) it was held that under the provisions of law governing taxation of corporations (chap. 456, Laws of 1887), which required, in order to ascertain the capital subject to taxation, that all the property owned by a corporation, both real and personal, shall be valued, and that from the aggregate the assessed value of the real estate be deducted in determining the value of real estate, the assessors are not bound by the assessed valuation. This does not necessarily show the full value, and the assessors may legally disregard it and estimate the real estate at its actual value, although this exceed the assessed valuation.

While this was a case reviewing the provisions of law governing the taxation of corporations, yet it involves a principle similar to the one now presented, where a tax is imposed upon the stockholders of the corporation.

In the case cited Chief Judge Andrews (at page 100) said: "In case of corporations it may happen that an undervaluation in the assessment of the real estate as such will be corrected in its valuation as part of the capital, and so the undervaluation may be remedied and the whole property be subjected to taxation at its real value. The fact, therefore, that the assessed value of the relators' real estate was $1,515,400 does not necessarily show that it was its full value, nor did it, we think, preclude the commissioners from estimating its value for the purpose of ascertaining the capital subject to taxation at its actual value, although it exceeded the assessed value. The act of the commissioners in undervaluing the real estate in its assessment as such did not estop the public nor relieve them of the duty in ascertaining the value of the capital to
193 estimate the real estate at its full value. We are not here concerned with any question of inequality of assessment as between the relator and other tax-payers. We hold that the commissioners could legally disregard the assessed value of the real estate in estimating the value of the capital, and the question of legality is the only point now in question."

The fallacy of the argument of double taxation is very apparent. The bank carried its real estate on the books at a valuation of $93,000; the assessors of Brooklyn have placed it on the rolls at $50,000. Section 24 of the tax law provides that a stockholder is entitled to have deducted from the actual value of the stock this assessed value. There is no double taxation for the reason that the tax law contemplates that a tax shall be imposed upon the actual value of the stock, less the value of the real estate, appearing upon the assessment-roll. It is clear that the stockholders have received the benefit of this deduction.

The second question is raised by the contention of the appellants

that the assessment upon the shares of stock of the First National Bank of Brooklyn was at a greater rate than on other moneyed capital in the hands of individual citizens of the State, namely, in the hands of the trust companies of Brooklyn.

We have thus presented the question whether the manner in which trust companies are assessed in this State is in violation of section 5219 of the Revised Statutes of the United States, the material portion of which provides "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The power of a State to tax a national bank and its stockholders has been considered and construed many times by the Supreme Court of the United States, and it is unnecessary to consider
194 all the cases.

In the Bank Tax case (2 Wall., 200) it was held that a tax laid by a State on banks, based upon a valuation equal to the amount of capital stock paid in or secured to be paid in, is a tax upon the property of the institution, and when that property consists of stock of the Federal Government the law imposing the tax is void.

In Van Allen *v.* Assessors (70 U. S. (3 Wall.), 573), the question of taxing the shares of national banks came up from the State of New York under a statute held to be defective because it did not contain the limitation in the national banking act that the tax should not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where the association is located. This omission was afterwards remedied by amendment.

The main question decided, however, was whether the State possessed the power to authorize the taxation on the shares of these national banks in the hands of stockholders whose capital is wholly invested in stocks and bonds of the United States, and it was held that this power was possessed by the State.

The distinction was pointed out between a direct tax imposed on the capital stock of a bank and a tax laid upon the owners of its shares. In the first case the deduction must be allowed, and in the other it is not proper.

In People *v.* Commissioners (71 U. S. (4 Wall.), 244), arising in the State of New York, the last question above referred to was again brought up, but not discussed, as it was held to have been disposed of in Van Allen *v.* Assessors.

The other point presented was the clause in the forty-first section of the national bank act which provides as follows as to the
195 tax: "But not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State" (now § 5219, U. S. Revised Statutes).

Mr. Justice Nelson said in this connection: "It is argued that the assessment upon the shares of the relator is at a greater rate than that of the personal property of individual citizens, upon the ground that allowance was made on account of United States securities held and owned by them, when at the same time the deduction was dis-

allowed to him. The answer is that upon a true construction of this clause of the act the meaning and intent of the law-makers were that the rate of taxation of the shares should be the same or not greater than upon the moneyed capital of the individual citizen, which is subject or liable to taxation—that is, no greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed taxable capital in the hands of the citizens."

The learned judge, further on in the opinion, says: "Another objection taken is that the taxation of the shares of the relator is illegal on account of this deduction, it being a departure from the rate of assessment prescribed in the clause already cited. The answer is that this clause does not refer to the rate of assessments upon insurance companies as a test by which to prevent discrimination against the shares; that is confined to the rate of assessments upon moneyed capital in the hands of individual citizens. These institutions are not within the words or the contemplation of Congress; but even if they were the answer we have already given to the deduction of these securities in the assessment of the property of individual citizens is equally applicable to them. These companies are taxed on their capital, and not on the shareholder, at the same rate as other personal property in the State. There is not
196 much danger to be apprehended of a discriminating tax in their favor prejudicial to the rights or property of a citizen, and, of course, to the rights of the shareholders in these national banks, who stand on the same footing."

In Mercantile *v.* New York (121 U. S., 138) the bill was filed by the complainant as a national bank. It sought to restrain the collection of taxes assessed upon its stockholders in respect of their shares therein on the ground that the taxes to be collected by the defendants were illegal and void under section 5219 of the Revised Statutes of the United States, being at a greater rate than those assessed under the laws of New York upon other moneyed capital in the hands of individual citizens of that State. It was claimed that there were a large number of unlawful exemptions under the laws of the State of New York in violation of the statute, to which reference has been made; among others, trust companies and life insurance companies were named.

Mr. Justice Matthews, in delivering the opinion of the court, said: "It is accordingly contended on behalf of the appellees in the present case, 1st, that the shares of stock in the various companies incorporated by the laws of New York as moneyed or stock corporations, deriving an income or profit from their capital or otherwise, including trust companies, life insurance companies, and savings banks, are not moneyed capital in the hands of the individual citizen within the meaning of the act of Congress; 2nd, that if any of them are, then the corporations themselves are taxed under the laws of New York in such a manner and to such an extent that the shares of stock therein are in fact subject to a tax equal to that which is assessed upon shares of national banks; and, 3rd, that if there are

any exceptions they are immaterial in amount and based upon
197 considerations which exclude them from the operation of the rule relative to taxation intended by the act of Congress."

The learned judge, after reviewing a number of authorities in the Supreme Court of the United States and discussing the question generally, said: "It follows as a deduction from these decisions that 'moneyed capital in the hands of individual citizens' does not necessarily embrace shares of stock held by them in all corporations whose capital is employed, according to their respective corporate powers and privileges, in business carried on for the pecuniary profit of shareholders, although shares in some corporations, according to the nature of their business, may be such moneyed capital. * * * The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people and to facilitate the operations of the Treasury of the United States. * * * It was deemed consistent with these national uses and otherwise expedient to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. * * * The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans and dealing in negotiable securities issued by the govern-
198 ment, State and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress. That the words of the law must be so limited appears from another consideration; they do not embrace any moneyed capital in the sense just defined, except that in the hands of individual citizens. This excludes moneyed capital in the hands of corporations, although the business of some corporations may be such as to make the shares therein belonging to individuals moneyed capital in their hands, as in the case of banks."

The opinion takes up the matter of trust companies. After commenting upon certain legislation of the State of New York in respect to them and not material to consider at this time, the court said: "Trust companies, however, in New York, according to the powers conferred upon them by their charters and habitually exercised, are in no proper sense of the word banking institutions."

After enumerating the general powers of trust companies, the

court said: "It is evident, from this enumeration of powers, that trust companies are not banks in the commercial sense of that word, and do not perform the functions of banks in carrying on the exchanges of commerce."

In the case at bar the appellants' counsel contends that, since the decision of the case last cited, the powers of trust companies have been increased by the banking law of 1892 (chap. 689, § 156),
199 as it confers upon them all the powers prescribed by the statute laws of the State of New York to banks created thereunder, except the power to emit bills which circulate as money.

While this statement is unintentionally much broader than the detailed provisions of the statute referred to w-rrant, yet it is true that trust companies exercise the powers conferred upon individual banks and bankers by section 55 of the banking act, and subject to its restrictions.

This section fixes the rate of interest to be charged, and imposes penalty for violation of its provisions.

It is, however, to be remembered that trust companies are very much limited as to the money they can use for these purposes. Their capital must be invested in United States bonds, State or municipal bonds, or first-mortgage bonds on improved real estate, and is thereby separated from the surplus and deposits of the company that may be used for the purposes to which reference has been made.

A trust company accepts and executes all trusts of every description committed to it by any person or corporation or any courts of record, receives the title to real or personal estate on trusts created in accordance with the laws of the State, and executes such trusts, acts as agent for corporations in reference to the issuing, registering, and transferring certificates of stock and bonds and other evidences of debt, accepts and executes trusts for married women in respect to their separate property, and acts as guardian for the estates of infants.

It is very obvious that trust companies are not in the legal or commercial sense engaged in the business of banking.

A national bank is authorized to issue notes payable on demand intended to circulate as money, and while compelled to
200 secure its circulation by the deposit of United States securities, it can employ the balance of its capital for business purposes, thereby securing a profitable return for its stockholders. A national bank occupies a distinct field of operation as compared with a trust company, and enjoys privileges that are not accorded to the latter, which are the source of great profit.

It is also to be borne in mind that the Federal Government imposes a tax of ten per cent. on the bills issued by State banks, which practically prevents them from competing with national banks in putting out circulation, which is greatly to the advantage of the latter.

In the case of Owensboro National Bank *v.* Owensboro (173 U. S., 664), the Supreme Court of the United States referred to section 5219 of the United States Revised Statutes, and held, reviewing some of the former cases, that it is the measure of power of the State to tax

national banks, that power being confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank.

Mr. Justice White uses this language (page 677): "This question was examined, and it was decided that as the shares of stock in the hands of the shareholders were distinct and different subject-matter of taxation from the property or rights of the bank, that therefore the power conferred by Congress could be exercised so as to tax the shareholders, even although the property of the bank was invested in non-taxable bonds of the United States, because the two were distinct and different things. * * * These cases (referring to Van Allen *v.* The Assessors, and other cases), interpreting the act of Congress, have never been questioned, and, indeed, form the basis upon which the taxation of the shares of stock in the names
201 of the shareholders allowed by the act of Congress have been made efficacious for the purpose of bringing a vast amount of property within the taxing powers of the States which would have been excluded had not the principles which the cases announced been established."

We have not deemed it necessary to consider in detail the various points argued by the appellants. It is sufficient to say that, after an examination of them, we see no reason to disturb the order of the appellate division.

The order appealed from should be affirmed, with costs.

Parker, Ch. J., O'Brien, Martin, Vann, and Landon, JJ., concur; Haight, J., not voting.

Order affirmed.

[Endorsed:] 1897. No. 4741. 8,136. Jenkins *et al. vs.* Neff *et al.* E. Copy. Opinion by Judge Bartlett. Filed Nov. 17, 1900.

202 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 5th day of June, in the year of our Lord one thousand nine hundred, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, June 6th, 1900.

203 THE PEOPLE, &c., *ex Rel.* JOHN G. JENKINS ET AL., Stockholders of the First National Bank of Brooklyn, Appellants,

ag'st

BARZILLAI G. NEFF ET AL., Constituting the Board of Assessors of the City of Brooklyn, Respondents.

Be it remembered that on the 7th day of April, in the year of our Lord one thousand nine hundred, The People, &c., *ex rel.* John G

Jenkins *et al.*, stockholders, &c., the appellants in this proceeding, came here into the court of appeals, by Frank Harvey Field, their attorney, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the second judicial department; and Barzillai G. Neff *et al.*, &c., the board of assessors of the city of Brooklyn, the respondents in said proceedings, afterward appeared in said court of appeals, by John Whalen, corporation counsel, their attorney.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

204 Whereupon the said court of appeals, having heard this proceeding argued by Mr. Seymour D. Thompson, of counsel for the appellant, and by Mr. William J. Carr, assistant corporation counsel, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is, affirmed, with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

205 Therefore it is considered that the said order be, and the same hereby is, affirmed, &c., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *June 6th*, 1900.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

206 At a special term of the supreme court, held at the courthouse, in the borough of Brooklyn, on the 9th day of June, 1900.

Present: Hon. Burr Mattice, justice.

In the Matter of the Application of JOHN G. JENKINS and Others, &c.,
vs.
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn.

The relators herein having appealed from the order of the appellate division which affirmed an order of the special term which set aside the report of a referee, and the appeal having come on to be heard and the court of appeals having affirmed said order with costs:

Now, on reading and filing the remittitur from the court of appeals and on motion of John Whalen—

It is ordered that the said order of the court of appeals affirming the order appealed from be, and the same hereby is, made the order of this court.

Enter.

B. M., *J. S. C.*

Granted Jun- 9, 1900.

PETER P. HUBERTY, *Clerk.*

207 [Endorsed:] New York supreme court, Kings county. In the matter of the application of John G. Jenkins *et al.*, &c., *vs.* Barzillai G. *Beff et al.*, constituting the board of assessors of the city of Brooklyn. Order. John Whalen, corporation counsel, Borough hall, Brooklyn, N. Y. Filed June 11, 1900.

208 Supreme Court, Kings County.

In the Matter of the Application of JOHN G. JENKINS and Others, &c.,
vs.
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn.
Judgment, June 11, 1900.

The relator- herein having appealed to the court of appeals in the above-entitled proceeding, and the court of appeals having affirmed the order appealed from, with costs, and the order of the court of appeals having been made the order of this court, and the costs having been taxed at one hundred twenty-two $\frac{43}{100}$ dollars:

Now, on motion of John Whalen, corporation counsel, it is adjudged that the said order so appealed from be, and the same hereby is, affirmed, and that the respondents recover of the relators the sum of one hundred twenty-two $\frac{43}{100}$ dollars, costs and disbursements, and that they have execution therefor.

PETER P. HUBERTY.

209 [Endorsed:] New York supreme court, Kings county. In the matter of the application of John G. Jenkins *et al. vs.* Barzillai G. Neff *et al.*, constituting the board of assessors of the city

of Brooklyn. Judgment. J. B., p. 106. John Whalen, corporation counsel, Borough hall, Brooklyn, N. Y. Filed June 11, 1900, at 11.45 a. m.

210 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, October Term, 1900.

JOHN G. JENKINS and Others, Stockholders of the First National Bank of Brooklyn, Relators, Plaintiffs in Error,
against
BARZILLAI G. NEFF and Others, Constituting the Board of Assessors of the City of Brooklyn, Respondents, Defendants in Error.
} Assignment of Errors.

Now come the plaintiffs in error in the above-entitled cause (relators in the court below) and, assigning the errors arising upon the record and proceedings in the above-entitled cause as the errors upon which they intend to rely in the prosecution of the writ of error sued out by them in this court in this cause, say that in the record, proceedings, and judgment in this cause there is manifest error in the following particulars—that is to say:

1. That the court below erred in sustaining the exceptions of the respondents (defendants in error in this court) and in overruling the exceptions of the petitioners (plaintiffs in error in this court) to the report of the referee made in said cause.

2. That the court below erred in modifying the report of the said referee so as to exclude the reduction of taxes assessed against the shares of these relators (plaintiffs in error in this court) al-
211 lowed by him in his conclusion of law numbered "second."

3. That the court below erred in overruling an exception made by these relators (plaintiffs in error in this court) to the rulings of the referee wherein he refused to allow the said relators to show that the national banks existing in the city of Brooklyn, in point of fact, suffered from the unfriendly competition of the trust companies existing in that city.

4. That the court below erred in overruling the exceptions taken by these relators (plaintiffs in error in this court) to the refusal of the referee to find in accordance with the twenty-eighth finding of fact presented by the relators to him.

5. That the court below erred in sustaining so much of the report of the referee wherein he found, "as matter of fact," on the evidence before him, that the trust companies therein named were not in competition with national banks within the sense and meaning of the words of section 5219 of the Revised Statutes of the United States, so as to make their shares of stock "other moneyed capital in the hands of individual citizens." The finding was not a "matter of fact," but was a conclusion of law to be drawn from established facts, involving the interpretation of the Federal statute; hence the plain-

tiffs in error are not concluded in this court by the frame of language employed by the referee in making this finding.

6. That the court below erred in confirming the first conclusion of law found by the referee, namely, that the provision of chapter 908 of the taxing law of the State of New York of 1896 was not unconstitutional or illegal as being in violation of section 5219 of
212 the Revised Statutes of the United States.

7. That the court below erred in giving no value to the fact founded by the referee, that in ascertaining the value for taxation of the shares of the First National Bank of Brooklyn for the taxing year 1897 the board of assessors (respondents in the court below and defendants in error in this proceeding) made their estimate upon the basis of the aggregate value of the capital stock, the surplus, and the undivided profits of the said First national bank, but did not allow the deduction therefrom of ten per centum of the amount of the capital of the said First national bank, which deduction was allowed the eight trust companies of the taxing district of Brooklyn in assessing their property for taxation, thus creating a discrimination against these relators (plaintiffs in error in this court) in favor of the other moneyed capital in the hands of individual citizens of the State of New York, contrary to section 41 of the national banking and currency act, the same being section 5219 of the Revised Statutes of the United States.

8. That the court below erred in giving no value to the facts found by the referee and confirmed by the court in holding that whereas the eight trust companies of the city of Brooklyn had in the taxing year 1897 an aggregate of capital, surplus, and undivided profits amounting to $11,485,529.86, but were nevertheless taxed only upon the sum of $6,361, whereas the national banks of said city were assessed upon an aggregate value of their stock for said year in the sum of $6,495,100, which, after allowing deductions to the shareholders in respect of their individual indebtedness, left an aggregate value of their stock assessed for taxation in the sum of $4,345,522, and in holding that this was not a violation of that clause of section 41 of the national bank act, the same being section
213 5219 of the Revised Statutes of the United States, which provides that State taxation of the shares of national banks "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

9. That the court below erred in holding that this case was governed by the decision of the Supreme Court of the United States in the case of Mercantile Bank *v.* New York, 121, 138, which decision was rendered in the year 1887, the statute law of the State of New York having been since amended so as to confer upon the trust companies of said State all the powers possessed by the banks of said State, except the power to issue circulating notes, the undisputed evidence in this case showing that the eight trust companies of the city of Brooklyn, the taxing district within which the shares of the First National Bank of Brooklyn were taxed for the taxing year 1897, were in the habitual exercise of the powers of the banks, and that their strictly banking business constituted about ninety-six and

one-half per centum of all their business, while their so-called "trust business" constituted a very small per centum of all their business, so that upon the existing statute law and the incontestible facts of this record this case stands on a totally different footing from the Mercantile Bank case.

10. That the court below erred in drawing the conclusion of law upon the undisputed evidence taken and returned by the referee and from the facts found by the referee on said evidence that the eight trust companies existing in the city of Brooklyn in the taxing year 1897 were not banks and did not employ their capital (save as to the issuing of circulating notes) in the same way wherein the national banks then existing in the city of Brooklyn employed
214 their capital, and in holding that said trust companies were not in competition with the national banks.

11. That the court below erred in holding that the assessment made by respondents in said proceeding (defendants in error in this court) of the shares of the First National Bank of Brooklyn owned by the relators in said proceeding (plaintiffs in error in this court) for the taxing year 1897 was not laid at a greater rate than the taxes laid by the said board of assessors for the said taxing year upon moneyed capital in the hands of individual citizens of the State of New York, namely, in the hands of eight trust companies of the city of Brooklyn, said city being the taxing district over which said board of assessors exercised its jurisdiction.

12. That the court below erred in modifying the report of said referee by fixing the value of the shares of the stock of the First National Bank of Brooklyn, for the purpose of assessment for taxation in the year 1897, at the sum of $336 per share, and in confirming the report as thus modified.

13. That the court below erred in confirming the assessment of the shares of stock of the First National Bank of Brooklyn for the year 1897 as finally fixed by the board of assessors of the city of Brooklyn at $336 per share, and in adjudging that the respondents (defendants in error in this court) recover the costs and disbursements of said proceeding.

14. That the court below erred in refusing to adjudge the assessment made upon the shares of these relators (plaintiffs in error) to be void upon the ground that the national banks were assessed upon a different principle from that upon which the trust companies were assessed.

215 15. The court of appeals of the State of New York erred in not reversing the final order and judgment of the appellate division for the second judicial department of said State, and in not reversing the final order of the supreme court of said State for Kings county, and in not directing a judgment or order to be entered for the relators (plaintiffs in error in this court) striking the assessment laid upon the shares of stock of the First National Bank of Brooklyn from the assessment-rolls of the city of Brooklyn for the year 1897, and awarding costs to the relators.

And the relators in the above-entitled cause (plaintiffs in error in this court) pray the court that the final order or judgment rendered

in this cause by the supreme court of the State of New York for Kings county, in said State, affirmed by the appellate division for the second judicial department of said State and by the court of appeals of said State, may be reversed, annulled, and altogether held for nothing; that the plaintiffs in error may be restored to all things which they have lost by occasion of the said final order or judgment, and that this honorable court will send its mandate to the said supreme court of the State of New York, commanding the said court to enter judgment in said cause vacating and annulling the assessment for taxes made by the respondents (defendants in error in this court) upon the shares of capital stock owned by these plaintiffs in error in the First National Bank of Brooklyn, and awarding costs to the plaintiffs in error, in accordance with the laws and customs of the United States thereunto appertaining.

FRANK HARVEY FIELD,
Attorney for Plaintiff in Error.
SEYMOUR D. THOMPSON,
Of Counsel.

216 [Endorsed:] 1897. No. 4741. 8,136. E. Supreme Court of the United States, October term, 1900. John G. Jenkins and others, stockholders of the First National Bank of Brooklyn, *vs.* Barzillai G. Neff and others, constituting the board of assessors of the city of Brooklyn. Original. Assignment of errors. Frank Harvey Field, attorney for petitioner, 215 Montague street, Brooklyn, city of New York. Seymour D. Thompson, of counsel. Filed Nov. 2, 1900.

217 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York for the county of Kings, of said State, in the second judicial department of said State, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a certain plea or suit which is in the said supreme court of the State of New York, before you or some of you, said judgment having been affirmed by the court of appeals of the said State of New York, the same being the highest court of law and equity of the said State in which a decision could be had in the said suit between John G. Jenkins and one hundred and forty other stockholders of the First National Bank of Brooklyn, in said State, relators in a proceeding for a writ of certiorari against Barzillai G. Neff and sixteen others, constituting the board of assessors of the city of Brooklyn, of said State, for the taxing year 1897, respondents in said proceeding, and the record having been remitted from said court of appeals to your honorable court, wherein was drawn in question the construction of a clause of an act of Congress, to wit, section 41 of the act of Congress, as amended, known as the national banking and currency act, the same being section 5219 of the Revised Statutes of the United States, which decision was against the

right, title, privilege, and exemption specially set up and claimed under the said act of Congress by the said relators, manifest error hath been committed, to the great damage of the said John G. Jenkins and one hundred and forty other stockholders of the First National Bank of Brooklyn, as aforesaid, relators in said pro-
218 ceedings, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on their behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid having being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 29th day of October, in the year one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Oct. 29, 1900.

So ordered November 3d, 1900.

J. T. MAREAN,
Justice Supreme Court, State of New York.

219 [Endorsed:] 1897. No. 4741. 87, 134. E. Supreme Court of the United States, October term, 1900. John G. Jenkins and others, stockholders of the First National Bank of Brooklyn, *vs.* Barzillai G. Neff and others, constituting the board of assessors of the city of Brooklyn. Original. Writ of error. Frank Harvey Field, attorney for petitioner, 215 Montague street, Brooklyn, city of New York. Seymour D. Thompson, of counsel. A copy of the within paper this day received, Nov. 3, 1900, at corporation counsel's office, Brooklyn. Filed Nov. 2, 1900.

220 UNITED STATES OF AMERICA, *ss:*

To Barzillai G. Neff, president, and John Drescher, Jr., Louis Finkelmeier, George W. Head, Robert E. L. Howe, Ernst J. Kaltenbach, Augustus Kurth, James McLeer, John McNamara, Thomas A. Moorehead, William H. Flynn, Jacob D. Remsen, Michael Ryan, Edward H. Schlueter, Anson Squires, William J. Taylor, and Benjamin W. Wilson, assessors, constituting the board of assessors of the city of Brooklyn for the taxing year 1897, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error directed to the honorable judges of the supreme court of the State of New York, for county of Kings, of said State, in the second judicial department of said State, and filed in the office of the clerk of said court, wherein John G. Jenkins and one hundred and forty others, stockholders in the First National Bank of Brooklyn, in said State, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment or final order rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 29 day of October, in the year of our Lord one thousand nine hundred.

R. W. PECKHAM.

221 [Endorsed:] 1897. No. 4741. 8, 136. E. Supreme Court of the United States, October term, 1900. John G. Jenkins and others, stockholders of the First National Bank of Brooklyn, *vs.* Barzillai G. Neff and others, constituting the board of assessors of the city of Brooklyn. Original citation. Frank Harvey Field, attorney for petitioner, 215 Montague street, Brooklyn, city of New York. Seymour D. Thompson, of counsel. A copy of the within paper this day received, Nov. 3, 1900, at corporation counsel's office, Brooklyn. Filed Nov. 2, 1900.

222 Know all men by these presents that we, John G. Jenkins, of the borough of Brooklyn, N. Y. city, N. Y., as principal, and the National Surety Company, having an office and principal place of business at 346 Broadway, Manhattan borough, N. Y. city, N. Y., as surety, are held and firmly bound unto Barzillai G. Neff and others, as assessors, in the full and just sum of five hundred ($500.00) dollars, to be paid to the said Barzillai G. Neff and others, as assessors, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of November, in the year of our Lord one thousand nine hundred.

Whereas lately, at a term of the United States Supreme Court, in a suit depending in said court between John G. Jenkins and others, plaintiffs, and Barzillai G. Neff and others, a judgment was rendered against the said John G. Jenkins and others in the court of appeals of the State of New York, thereafter remitted for enforcement to the supreme court of said State, and the said John G. Jenkins and others having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Barzillai G. Neff and others, as assessors, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if
223 the said John G. Jenkins and others, stockholders of the First national bank, shall prosecute said action to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN G. JENKINS. [SEAL.]
NATIONAL SURETY COMPANY, [SEAL.]
By ALEX. GREIG, *2nd Vice-President.*
Attest: R. M. NUGENT, *Res. Ass't Secretary.*

Sealed and delivered in presence of—
GEO. D. DURYEA.

[2c. int. rev. stamp.]
[½c. int. rev. stamp.]

Approved by—
WM. W. GOODRICH,
Pres. Justice of the Supreme Court,
State of New York, App. Div., 2nd Dept.

Approved:
——— ———,
Associate Justice, Supreme Court U. S.

224 COUNTY OF NEW YORK, *ss:*

On this 12th day of November, 1900, before me personally appeared Alex. Greig, 2nd vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the county of New York; that he is the 2nd vice-president of the National Surety Company, the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of New York Session Laws of 1893; and the said Alex. Greig

further said that he is acquainted with R. M. Nugent and knows him to be the res. ass't secretary of said company; that the signature of the said R. M. Nugent subscribed to the said instrument is in the genuine handwriting of the said R. M. Nugent, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Alex. Greig, 2nd vice-president.

MARGRETTA CROOKE,
[SEAL.] *Notary Public, No. 96, for Kings County.*

Certificate filed in New York, Queens, Richmond, and Westchester counties.

225 *Copy of By-law.*

Be it remembered that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"ARTICLE XIII, SEC. 1. Signatures required.—All bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, shall be signed by the president, the vice-president, the second vice-president, a resident vice-president, or an attorney-in-fact, and, except when signed by an attorney-in-fact, shall have the seal of the company affixed thereto, duly attested by the secretary, an assistant secretary or a resident assistant secretary. The vice-president, second vice-president and resident vice-presidents, shall each have authority to sign such instruments whether the president be absent or incapacitated or not; and the assistant secretaries and resident assistant secretaries shall each have authority to seal and attest such instruments, whether the secretary be absent or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the company as if the same were signed by the president, duly sealed and attested by the secretary."

226 STATE OF NEW YORK, } *ss:*
County of Kings, }

I, Peter P. Huberty, clerk of the county of Kings and clerk of the supreme court of the State of New York in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original bond on appeal filed in my office November 16, 1900, and that the same is a true transcript thereof and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 21st day of November, 1900.

[Seal of Kings County.]

PETER P. HUBERTY, *Clerk.*

{ 10c. U. S. internal-revenue stamp, canceled Nov. 21, 1900. Peter P. Huberty, Kings Co. }

COUNTY OF NEW YORK, *ss:*

I, R. M. Nugent, res. ass't secretary of the National
pany, have compared the foregoing by-law with the ori
as recorded in the minute book of said company, and
the same is a correct and true transcript therefrom and
of said original by-law.

Given under my hand and seal of the company, at
New York, this 12th day of Nov., 1900.

[SEAL.] R. M. NU
Res. Ass

227 [Endorsed:] United States Supreme Court.
John G. Jenkins and others, stockholders of
bank, *vs.* Neff and others, constituting board of assesso
appeal. Frank Harvey Field, attorney for pl'ff, app'l't,
gue St., Brooklyn, city of New York, N. Y. Satisfacto
& sufficiency. John Whalen, corporation counsel. A
20, 1900. R. W. Peckham. Filed Nov. 16, 1900.

Endorsed on cover: File No., 17,975. New York su
Term No., 490. John G. Jenkins and one hundred an
stockholders of the First National Bank of Brooklyn,
error. *vs.* Barzillai G. Neff, president, and John Dresc
assessors, constituting the board of assessors of the city
for the taxing year 1897. Filed November 24th, 1900.

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UGENT,
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No. 198.

FILED
FEB 27 1902
JAMES H. McKENNEY
Clerk

Supreme Court of the United States.

By. of Field & Thompson for

OCTOBER TERM, 1901.

Filed Feb. 27, 1902.

JOHN G. JENKINS and ONE HUNDRED AND FORTY OTHER STOCKHOLDERS OF THE FIRST NATIONAL BANK OF BROOKLYN,

Plaintiffs-in-Error,

vs.

BARZILLAI G. NEFF, President, and JOHN DRESCHER, Jr., *et al.*, Assessors, Constituting The Board of Assessors of the City of Brooklyn for the Taxing Year 1897.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AND BRIEF OF THE PLAINTIFFS IN ERROR.

FRANK HARVEY FIELD,
Attorney for Plaintiffs-in-Error,
44 Court Street, Brooklyn,
City of New York, N. Y.

SEYMOUR D. THOMPSON,
Of Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1901.

JOHN G. JENKINS and One hundred and forty other Stockholders of the First National Bank of Brooklyn, Plaintiffs-in-Error, vs. BARZILLAI G. NEFF, President, and John Drescher, Jr., *et al.*, Assessors, constituting the Board of Assessors of the City of Brooklyn for the Taxing Year 1897.	No. 198.

STATEMENT AND BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

A. An Outline Statement of the Case.—This is a proceeding by Certiorari, under §§ 250, 251, 252 and 253, of Chapter 908 of the Laws of New York of 1896, brought by John G. Jenkins and one hundred and forty others, stockholders of the First National Bank of

Brooklyn, against the defendants, constituting the Board of Assessors of the City of Brooklyn, to review and correct the assessment, for the year 1897, made by the respondents upon the shares of stock owned by the petitioners in the First National Bank of Brooklyn, New York, a National Banking Association, creating and existing under the Statute of the United States, known as the National Banking and Currency Act.

Record, p. 1.

The respondents made due return to the Certiorari, and thereafter a Referee was appointed to take evidence, and to report the same to the Court, with his findings of fact and conclusions of law thereon. The Referee proceeded to hear the evidence adduced by the parties.

Record, p. 70, *et seq.*

Thereafter the relators proposed to the Referee certain findings of fact which they deemed to have been established by the evidence taken before him, and certain conclusions of law which they deemed to arise thereon, and solicited his rulings upon the same.

Record, p. 42, *et seq.*

The Referee indorsed on the margins of this document his responses to each paragraph, either as "Found" or "Refused," or as "Found" with qualifying words, or as "Refused" with qualifying words. To these findings of fact an amendment was made, embodying an additional finding, by stipulation of the parties.

Record, p. 57.

Thereafter the Referee made, and the respondents filed, in a separate document, his "Findings of Fact and Conclusions of Law."

Record, p. 57, *et seq.*

In still another document the Referee made, and the respondents filed, the "Referee's Report."

Record, p. 57, *et seq.*

Thereafter the relators gave notice of a motion for an order modifying the Referee's report.

Record, p. 67.

And the respondents gave notice of a similar motion.

Record, p. 68.

The relators filed exceptions to the Referee's report.

Record, p. 68, *et seq.*

And the respondents also filed exceptions to the same.

Record, p. 70.

The cause coming on to be heard at Special Term of the Supreme Court before the Hon. Michael H. Hirschberg, was taken under advisement, and thereafter a written opinion was delivered by the learned Judge.

Record, p. 82, *et seq.*

And a final order was made, overruling the conclusions of the Referee, and confirming the assessment made by the respondents.

Record, pp. 89, 90.

From this order appeal was taken to the Appellate Division, Second Department, of the Supreme Court of the State of New York.

Record, p. 90.

Thereafter, the cause having been duly submitted to said Appellate Division by the respective parties through their counsel, upon oral arguments and printed briefs, the said Court, through Mr. Justice Woodward, delivered its opinion, in which it announced its judgment that the order appealed from should be affirmed with $10 costs and disbursements.

Record, p. 110, *et seq.*

Thereafter the Appellate Division entered judgment in conformity with this opinion.

Record, p. 117.

From which judgment an appeal was prosecuted to the Court of Appeals of the State of New York, where, after argument by counsel for the respective parties, the judgment of the Appellate Division was affirmed.

Record, pp. 125, 126.

The opinion of the Court of Appeals, delivered by Judge Bartlett, is found on the

Record, p. 119, *et seq.*

The record was thereafter remitted from the Court of Appeals to the Supreme Court of the State of New York.

Record, p. 126.

And the order of the Court of Appeals, affirming the order appealed from to said Court, was made the order of the Supreme Court at Special Term.

Record, p. 127.

To reverse the said order or judgment of the Court of Appeals of the State of New York, this

writ of error is prosecuted, in form to the Supreme Court of that State, where the record was thus lodged.

B. A Condensed Statement of the Rulings Below.—The assessment, as finally made by the respondents upon the shares of the relators, was at the rate of $336. per share. The effect of these various rulings will be best understood by the statement that the relators took and still adhere to the position that the assessment was wholly void, as being in contravention of the provision of Section 5219 of the Revised Statutes of the United States (Section 41 of the National Banking and Currency Act); that the Referee reported in favor of reducing the assessment to $268.-06 per share, while the learned Judge at Special Term confirmed the action of the assessors in fixing it at $336. per share, and this order was, in turn, affirmed by the Appellate Division; and the judgment of the Appellate Division was in turn affirmed by the Court of Appeals, and is the judgment which it is sought to re examine by this writ of error.

C. A Detailed Statement of the Facts, so far as they Present the Federal Question which this Court is Asked to Consider.

It is not thought necessary to set out the pleadings, as no question arises with reference to them.*

The return of the respondents (defendants in error), shows that the question made by the petition

*In this special certiorari proceeding, the return is not conclusive (People *ex rel.* v. Smith, 24 Hun, N. Y., 66.)

of the inequality of assessment for taxation as between the shareholders of the First National Bank of Brooklyn and other moneyed capital in the hands of individual citizens of the State, had been distinctly brought to the attention of the respondents as a board of tax assessors by a written notice from the stockholders (relators and plaintiffs in error herein), to the said board, on June 29th, 1897.

Record, p. 15.

It thus appears that the question intended to be submitted to this Court was raised *in limine* before the proper taxing officers, and was again raised in a variety of forms in the petition for certiorari.

The case was referred to a Referee to take evidence and report to the Court his findings of fact and conclusions of law.

Record, pp. 41, 42.

The relators (plaintiffs in error) adduced considerable evidence before the Referee, but the respondents (defendants in error) offered no countervailing evidence. The facts on which the judgment of the Court is invoked in this case therefore stand uncontroverted. As will hereinafter more fully appear, the exceptions to the rulings of the referee relate to his conclusions or deductions from an established state of facts.

The only controverted fact in the case, using the word fact in contradistinction from conclusion or deduction, was upon the question whether the relators had waived their right to maintain this proceeding, by reason of certain facts which had taken place prior thereto. The facts on which the claim that there had been such a waiver were set up by the respondents (defendants in error), in their return.

Record pp. 30, 31, and 32.

The evidence adduced in support of this claim of waiver is found in Schedule V annexed to the application of these relators (plaintiffs in error), to the respondents (defendants in error), for a reduction of the assessment on the shares of respondents. It shows—stating it most strongly for respondents—that the question whether there had been a waiver was a controverted question of fact. The Referee found that there had been no waiver;

Record, p. 63.

his finding on this contested question of fact is not re-examinable here, and nothing further will be said on the question.

The evidence adduced before the Referee was all presented by the relators (plaintiffs in error here), the respondents (defendants in error here) having rested without presenting any evidence. This evidence consisted, in the first place, of the testimony of a witness, EDWIN BOLITHO, laying the foundation for the introduction in evidence of the tax returns of all of the eight trust companies doing business in the then City of Brooklyn.

Record, p. 71.

These tax returns, numbered serially as exhibits one to eight, will be found in the

Record, beginning on p. 91 and ending on p. 104.

The Referee found, in each case except in the case of the Nassau Trust Company, that the system of assessment, deductions, or exemptions, was such as to leave no capital stock assessable for taxation for the year 1897 with respect to all of these trust companies except the Nassau Trust Company, which had an assessed valuation of only $6,361.

Record, pp. 49 to 53.

It was conceded by counsel for the respondents (defendants in error here),

Record, p. 72.

"That the capital of the trust companies in the City of Brooklyn was assessed for the year 1897 in the following manner: From the total gross assets of each company were deducted the amount of its indebtedness, including sums due depositors; the assessed value of the real estate owned by the corporation; an amount equivalent to ten per cent. of the capital stock whenever the corporation possessed a reserve fund of surplus profits exceeding the amount of said ten per cent.; such portion of the assets as were invested in securities of the United States, bonds of municipalities within the State, or in stock of other companies taxed upon their capital within the State; and any other securities exempt by law from taxation." It was further conceded by counsel for the respondents (defendants in error here) that, "in the case of each of the trust companies referred to, there was a surplus fund exceeding in amount ten per cent. of the capital stock, and the reduction of ten per cent. was made in each case."

Record, p. 72.

With reference to the nature of the business of the trust companies of Brooklyn, oral evidence was adduced before the referee, delivered by officers of three of these trust companies.

Mr. Frank L. Sniffen was secretary of the Manufacturers' Trust Company. That company loaned money and accepted all securities that were listed, or local securities that they knew all about. It made loans on personal security in the shape of notes, and called them bills purchased.

Record, pp. 77, 78.

In making loans on personal security the process was the same as any other notes subject to discount. They relied upon the strength of the maker as well as indorser. These loans were reduced to money again and reinvested from time to time, and this process kept up throughout the year. The capital of his company consisted of securities and were deposited by law, but the capital was paid in in money. They used their capital, surplus and undivided profits for the purpose of making a profit upon it from its use as money. When they made a loan on collateral they used a collateral note. Witness was here shown a collateral note put in evidence and called Exhibit 9.

Found on pp. 104 and 105 of the Record.

Witness did not think that their collateral note was exactly the same as the one shown to him. That was an old form of a note. "In a general way they are all about the same: our note is not the same as that." The witness had been employed in the Chemical National Bank for eight years, and he said: "We keep deposits and pay out money on checks in the Manufacturers' Trust Company in the same manner as is done in the Chemical Bank." He further testified: "I am familiar with the way in which the national banks in New York City and Brooklyn do their business, by reason of my connection and association with them in business."

James R. Cowing, the second vice-president and secretary of the Franklin Trust Company, testified that his company loaned money on collateral security, but did not, as a rule, loan money on a note, with or without indorsers and without collateral.

Record, p. 79.

It was admitted, for the purpose of this inquiry,

that the capital and surplus was all paid in the shape of cash. The witness further testified: "We use the money of our company for the purpose of making a profit from its use as money. We reduce our loans to money from time to time, and reinvest them in other loans. When one loan is paid off we reloan the money; and when we have money to loan we keep up that process throughout the year, reducing the loans to money and loaning it out again. We keep deposits for customers and pay them out on check in substantially the same manner as the banks do." Under objection from counsel for the respondents (plaintiffs in error here) this witness also testified that the general deposits of his trust company exceeded its trust deposits.

"Q. Does your Trust Company do business in the same way that the National Banks do, of your own knowledge?

A. In banking, yes."

* * * * * *

"We have what we call a Trust Department in the Manufacturers' Trust Company, and receive trust accounts from estates by order of the Court. We keep the trust deposits separate from the general deposits."

"Q. Which is the larger, your general deposits or your trust deposits?" Under objection by counsel for the respondents (plaintiffs in error here), the witness testified: "General deposits are the larger."

Mr. Edward Johnson, secretary of the Peoples' Trust Company, testified, among other things: "Our capital and surplus was all paid in in money. The surplus has since been increased from earnings. We keep general deposits and trust deposits. Our general deposits exceed our trust deposits. We loan money on collateral security.

We do not loan money on personal security, that is, a note with or without endorsers. We purchase notes. We occasionally purchase notes not secured by collateral."

Record, p. 79.

The witness was then asked by counsel for the relators (plaintiffs in error here). "In what respect does the process of purchasing a note differ from discounting a note?"

Under objection of counsel for the respondents (defendants in error here), the witness answered: "The business of purchasing notes is a very small part of our business, an incidental part. Practically, there is no difference. We buy a note at a discount. We reduce these loans on collateral and the money invested in notes on personal securities, to money again, from time to time, and reinvest it in other loans. That process keeps up throughout the year. We use our money for the purpose of making a profit on it as money. We keep our deposits and check them out in the same manner that banks do."

Record, pp. 79, 80.

On cross examination the same witness also stated: "The proportion of notes purchased, to our general business, is that, out of assets of, say, $9,000,000, we have to-day, I presume, not more than $300,000 worth of notes of all kinds, what we call Bills Purchased, that is about three per cent. We have loaned out on collateral, probably, $4,000,000 more.

Record, p. 80.

This witness further testified that the People's Trust Company was chartered in 1889; that the amount of its deposits in May, 1897, was some-

where in the neighborhood of $6,000,000—but could not recall it exactly; that it had trust deposits that were invested, amounting to about $1,000,000.

This witness having delivered from memory some testimony which, as taken down seems contradictory and unintelligible (it is found in the middle of page 80 of the Record), appears to have been brought down to the figures by the following question:

"Q. Can you tell me the amount of your deposits in trust on the first day of May, 1897?"

To this question the witness answered, under objection which was overruled:

"A. The amount of the trust funds was $272,-918.52. On the same day our individual deposits were $5,038,623.64; time certificates, $30,424.30; demand certificates of deposit, $833,989.06; loaned on collateral, $3,901,689.88; loaned on personal security, including bills purchased, $302,896.55."

Record, bottom of p. 80.

Mr. Cowing, recalled, then testified for the relators (plaintiffs in error here) against the objection of the respondents (defendants in error here) which was overruled, that on the first day of May, 1897, the Franklin Trust Company, of which he was an officer, had trust deposits amounting to $187,162.93; general deposits, $5,013,703.02; loaned on collateral, $1,721,932.44; loaned on personal security, including bills purchased, $505,-996.05; and that on the first day of June, 1897, the figures were as follows:

Deposits in trust	$ 232,160.36
General deposits	5,110,335.39

Loaned on collateral	1,558,911.44
Loaned on personal security, including bills purchased	460,291.20

Record, p. 81.

The relators, (plaintiffs in error in this court), against the objection of the respondents (defendants in error here), which was overruled,—the objection not running to the form of the testimony,—next put in evidence a statement showing the condition of the Manufacturers' Trust Company as of May, 1897, as follows:

Deposits in trust	$ 23,443.89
General deposits, including time and demand certificates	2,661,466.82
Amount loaned on collateral	1,236,521.25
Amount loaned on bond and mortgage and bills purchased	359,120.88

The Referee conformed his findings of fact to this testimony.

See Referee's findings numbered XXX, XXXI, and XXXIII; Record, pp. 55, 56.

For the purpose of showing the form of contract under which this trust company loaned money on collateral securities, the relators (plaintiffs in error here), also put in evidence a form of collateral note used by the Manufacturers' Trust Company.

Exhibit 10, Record, p. 105.

They also put in evidence a form of collateral note used by the bank of the relators (plaintiffs in error here) in loaning money.

Exhibit 12, Record, p. 107.

At the hearing before the Referee, in the examination of Mr. W. Addison Field, cashier of the

First National Bank, whose shareholders these relators are, the following questions were asked:

"Did your bank, at any time within the last ten years, commence paying interest to depositors?"

This question was admitted by the Referee, notwithstanding the objection and exception of counsel for the respondent, and the answer was "Yes."

Record, p. 76.

Then the two following questions were asked and excluded:

"Q. What induced your bank to take that action?"

"Q. Up to the time when you began to allow interests on deposits, had there been an increase or falling off in your deposits?"

Record, p. 77.

Nor would the Referee allow Mr. Charles D. Young, who was president of the National City Bank of Brooklyn, to answer the following question:

"Q. Has your bank suffered any in its deposits by reason of the competition of the trust companies, Mr. Young?"

Record, p. 75.

Having rejected this testimony, offered by the relators (plaintiffs in error here), for the purpose of showing that the stockholders of the national banks had suffered from the competition of the trust companies, the learned Referee refused to make the following finding of fact which was requested by the relators (plaintiffs in error here):

"XV. The moneyed capital thus used and "employed by said trust companies and the "stockholders therein, is invested for that pur-

"pose in securities by way of loan, discount "and otherwise, which are, from time to time, "according to the rules of business, reduced "again to money and reinvested. The said "trust companies are corporations in which "individual citizens own the shares of stock, "and the capital of said companies, employed "in carrying on its business is money, and the "object of such business is the making of "profit by its use as money; and the said trust "companies and the stockholders therein so "using and employing moneyed capital as "aforesaid come into direct competition with "the national banking associations and the "stockholders therein in their use and employ- "ment of moneyed capital."

Record, p. 49.

In his "Findings of Fact and Conclusions of Law," the Referee also inserted the following paragraph:

"I do also find, as matter of fact, from the evi- "dence before me, that the trust companies therein "named are not in competition with national banks, "within the sense and meaning of the words of Sec- "tion 5219 of the Revised Statutes [of the United "States], so as to make their shares of stock 'other "moneyed capital in the hands of individual citi- "zens.'"

Record, p. 63.

The Referee made this finding after having excluded the evidence of competition offered by the relators (plaintiffs in error here), above set out.

All of the judicial officers before whom this case was heard have based their decisions wholly upon the authority of the Mercantile Bank case.

See decision of Referee, Record, p. 65.
See decision of Judge at Special Term, Record, p. 85.

See decision of Appellate Division, Supreme Court, Record, p. 115.
See decision of Court of Appeals, Record, p. 122.

It thus appears that all the judicial officers of the State of New York, from the Referee to the Court of Appeals, denied the relief sought for by the relators (plaintiffs in error here) on the authority of the decision of this Court in the case of *Mercantile Bank v. New York, 121 U. S., 138;* and it is freely conceded that if the Mercantile Bank case requires this conclusion in a case presenting the state of the law and facts disclosed by this record, we have no right to be here.

On the question of the disparity of taxation as between the trust companies and the national banks, the Referee, at the request of the relators (plaintiffs in error here), made the two following findings:

"XXVI. That the aggregate assessed value of "the share stock of the national banks of the Bor-"ough (late City) of Brooklyn for the year 1897, as "ascertained and fixed by the Board of Assessors of "said city, is six million, four hundred and ninety-"five thousand, one hundred dollars ($6,495,100). "That certain of the shareholders of said stock ap-"plied for a reduction or cancellation of their indi-"vidual assessments on their holdings of said bank "stock, and the same was reduced or cancelled to "the amount of two million, one hundred and for-"ty-nine thousand, five hundred and seventy-eight "dollars ($2,149,578), leaving the amount of share "stock of national banks in the hands of the owners "or holders thereof in the City of Brooklyn for the "year 1897, on which the tax is actually and finally "assessed at the aggregate sum of four million, "three hundred and forty-five thousand, five "hundred and twenty-two dollars ($4,345,522)."

Record, p. 54.

"XXVII. That the total aggregate value of the "capital surplus and undivided profits of the eight "trust companies of the Borough (late City) of "Brooklyn for the year 1897, as shown by their "statements to the said Board of Assessors, "amounts to eleven million, four hundred and "eighty-five thousand, five hundred and twenty-"nine dollars and eighty-six cents ($11,485,529.86). "That the total aggregate value of the capital, "surplus and undivided profits of all the State and "National banks of the Borough (late City) of "Brooklyn as ascertained by said Board of Assess-"ors for the year 1897, after deducting therefrom "the assessed value of the real estate of all of said "banks, and the allowances set forth in paragraph "11 of the petition, amount in the aggregate to "six million, four hundred and ninety-five thous-"and, one hundred dollars ($6,495,100). That of "said capital, surplus, and undivided profits "of said trust companies, as above set forth, only "the sum of six thousand, three hundred and "sixty-one ($6,361) of the value thereof is capital "assessed for taxation for the year 1897, where-"as Four million, three hundred and forty-five "thousand, five hundred and twenty-two dollars "($4,345,522) of the aggregate value of the capital, "surplus and undivided profits of said banks is "actually assessed for taxation for the year 1897."

Record, pp. 54, 55.

On the basis of the foregoing evidence the Referee was requested to make the following finding, which he made after qualifying it thus: "*Found, except as to the words 'moneyed capital,' which I change to 'money.'*"

"XXV. That the owners and holders of the shares "of the capital stock in each and all of said trust "companies within the State of New York are "'individual citizens' using and employing 'mon-"eyed capital' for profit by its use as money. That "the shares of stock of such trust companies in the "hands of the owners or holders thereof are exempt "from taxation under subdivision 16 of Section 4 of

"the 'Tax Law,' Chapter 908 of the Laws of 1896
"of the State of New York, which reads as follows:

> " 'The owner or holder of stock in an incor-
> " 'porated company liable to taxation on its
> " 'capital shall not be taxed as an individual
> " 'for such stock.' "

Record, p. 54.

It will be perceived that the finding, as thus modified by the Referee reads as follows:

"That the owners and holders of the shares of
"the capital stock in each and all of said trust com-
"panies within the State of New York are 'individ-
"ual citizens' using and employing money for profit
"by its use as money. That the shares of stock of
"such trust companies in the hands of the owners
"or holders thereof are exempt from taxation under
"subdivision 16 of Section 4 of 'the Tax Law,'
"Chapter 908 of the Laws of 1896 of the State of
"New York, which reads as follows:

> " 'The owner or holder of stock in an in-
> " 'corporated company liable to taxation on
> " 'its capital shall not be taxed as an indi-
> " 'vidual for such stock.' "

Upon this finding the relators (plaintiffs in error here) will invoke the judgment of this Court in their favor.

In the course of the taking of testimony before the referee, counsel for the respondents (plaintiffs in error here), conceded that the Manufacturers' Trust Co., and *every trust company*, exercised all the powers conferred upon it by statute.

Record, p, 78.

The same concession was made with special refference to the Franklin Trust Company.

Record, near the bottom of p. 79.

Assignment of Errors.

The errors assigned in this Court are as follows:

Record, p. 128 to 131.

1. That the Court below erred in sustaining the exceptions of the respondents (defendants in error in this Court) and in overruling the exceptions of the petitioners (plaintiffs in error in this Court) to the report of the Referee made in said cause.

2. That the Court below erred in modifying the report of the said Referee so as to exclude the reduction of taxes assessed against the shares of these relators (plaintiffs in error in this Court) allowed by him in his conclusion of law numbered "second."

3. That the Court below erred in overruling an exception made by these relators (plaintiffs in error in this Court) to the rulings of the Referee wherein he refused to allow the said relators to show that the national banks existing in the City of Brooklyn, in point of fact, suffered from the unfriendly competition of the trust companies existing in that city.

4. That the Court below erred in overruling the exceptions taken by these relators (plaintiffs in error in this Court) to the refusal of the Referee to find in accordance with the twenty-eight findings of fact presented by the relators to him.

5. That the Court below erred in sustaining so much of the report of the Referee wherein he found, "as matter of fact," on the evidence before him, that the trust companies therein named were not in competition with national banks within the sense and meaning of the words of Section 5219 of the Revised Statutes of the United States.

so as to make their shares of stock "other moneyed capital in the hands of individual citizens." The finding was not a "matter of fact," but was a conclusion of law to be drawn from established facts, involving the interpretation of the Federal Statute; hence the plaintiffs in error are not concluded in this Court by the frame of language employed by the referee in making this finding.

6. That the Court below erred in confirming the first conclusion of law found by the Referee, namely, that the provision of Chapter 908 of the taxing law of the State of New York of 1896, was not unconstitutional or illegal as being in violation of Section 5219 of the Revised Statutes of the United States.

7. That the Court below erred in giving no value to the fact found by the referee, that in ascertaining the value for taxation of the shares of the First National Bank of Brooklyn for the taxing year 1897 the Board of Assessors (respondents in the Court below and defendants-in-error in this proceeding) made their estimate upon the basis of the aggregate value of the capital stock, the surplus, and the undivided profits of the said First National Bank, but did not allow the deduction therefrom of ten per centum of the capital stock of the said First National Bank, which deduction was allowed the eight trust companies of the taxing district of Brooklyn in assessing their property for taxation, thus creating a discrimination against these relators (plaintiffs in error in this Court) in favor of the other moneyed capital in the hands of individual citizens of the State of New York, contrary to Section 41 of the National Banking and Currency Act, the same being Section 5219 of the Revised Statutes of the United States.

8. That the Court below erred in giving no value to the facts found by the Referee and confirmed by the Court in holding that whereas the eight trust companies of the City of Brooklyn had in the taxing year 1897 an aggregate of capital, surplus, and undivided profits amounting to $11,485,529.86, but were nevertheless taxed only upon the sum of $6,361, whereas the national banks of said city were assessed upon an aggregate value of their stock for said year in the sum of $6,495,100, which, after allowing deductions to the shareholders in respect of their individual indebtedness, left an aggregate value of their stock assessed for taxation in the sum of $4,345,522, and in holding that this was not a violation of that clause of Section 41 of the National Bank Act, the same being Section 5219 of the Revised Statutes of the United States, which provides that State taxation of the shares of national banks "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

9. That the Court below erred in holding that this case was governed by the decision of the Supreme Court of the United States in the case of *Mercantile Bank v. New York, 121 U. S., 138*, which decision was rendered in the year 1887, the Statute law of the State of New York having been since amended so as to confer upon the trust companies of said State all the powers possessed by the banks of said State, except the power to issue circulating notes, the undisputed evidence in this case showing that the eight trust companies of the City of Brooklyn, the taxing district within which the shares of the First National Bank of Brooklyn were taxed for the taxing year 1897, were in the habitual exercise of the powers of the banks, and

that their strictly banking business constituted about ninety-six and one-half per centum of all their business, while their so-called "trust business" constituted a very small per centum of all their business, so that upon the existing statute law and the incontestible facts of this record this case stands on a totally different footing from the Mercantile Bank case.

10. That the Court below erred in drawing the conclusion of law upon the undisputed evidence taken and returned by the Referee and from the facts found by the Referee on said evidence, that the eight trust companies existing in the City of Brooklyn in the taxing year 1897 were not banks and did not employ their capital (save as to the issuing of circulating notes) in the same way wherein the national banks then existing in the City of Brooklyn employed their capital, and in holding that said trust companies were not in competition with the national banks.

11. That the Court below erred in holding that the assessment made by respondents in said proceedings (defendants in error in this Court) of the shares of the First National Bank of Brooklyn owned by the relators in said proceedings (plaintiffs in error in this Court) for the taxing year 1897, was not laid at a greater rate than the taxes laid by the said board of assessors for the said taxing year upon moneyed capital in the hands of individual citizens of the State of New York, namely, in the hands of eight trust companies of the City of Brooklyn, said city being the taxing district over which said board of assessors exercised its jurisdiction.

12. That the Court below erred in modifying the report of said referee by fixing the value of the shares of the stock of the First National Bank of

Brooklyn, for the purpose of assessment for taxation in the year 1897, at the sum of $336 per share, and in confirming the report as thus modified.

13. That the Court below erred in comfirming the assessment of the shares of stock of the First National Bank of Brooklyn for the year 1897, as finally fixed by the board of assessors of the City of Brooklyn at $336 per share, and in adjudging that the respondents (defendants in error in this Court) recover the costs and disbursements of said proceeding.

14. That the Court below erred in refusing to adjudge the assessment made upon the shares of these relators (plaintiffs in error) to be void upon the ground that the national banks were assessed upon a different principle from that upon which the trust companies were assessed.

15. That the Court of Appeals of the State of New York erred in not reversing the final order and judgment of the Appellate Division for the Second Judicial Department of said State, and in not reversing the final order of the Supreme Court of said State for Kings County, and in not directing a judgment or order to be entered for the relators (plaintiffs in error in this Court) striking the assessment laid upon the shares of stock of the First National Bank of Brooklyn from the assessment-rolls of the City of Brooklyn for the year 1897, and awarding costs to the relators.

Record, pp. 128 to 131.

Brief and Argument.

I. Grounds on which the Favorable Decision of this Court is invoked.

The plaintiffs in error invoke a favorable decision of this Court upon two essential grounds:

1. That this record incontestably shows that the eight trust companies of the then City of Brooklyn *were essentially banks* and were employing "moneyed capital" in direct and necessary competition with the National Bank in which these relators (plaintiffs in error here), are shareholders.

2. That the trust companies were taxed under a different law and under a different system from those applied in the taxation of the shares of the National Banks, and with the result that seven of said trust companies escaped taxation entirely except upon their real estate, while the eighth, a small trust company, was taxed (except upon its real estate) upon a valuation of $6,361 only. If the first proposition is decided in our favor, the second need scarcely be argued, so gross and manifest was the inequality of taxation between these two classes of institutions. The stress of this case lies, therefore, in the question whether this record shows incontestably that the eight trust companies of Brooklyn were essentially banks and were competing with the National Banks of Brooklyn in the use of "moneyed capital" within the meaning of Section 5219 of the Revised Statutes of the United States.

In discussing this question we take certain things for granted: that the Federal statute known as The National Banking and Currency Act is a part of "the supreme law of the land," and binds the Judges of the Courts of the State of New York

"anything in the Constitution or laws of any State to the contrary notwithstanding."

Const. of U. S., Art. VI, Sec. 2,

that Congress had the constitutional power to create the National banks;

McCullough *v.* Maryland, 4 Wheat. (U. S.), 316.
Allen *v.* Assessors, 3 Wall. (U. S.), 573;

that the National banks are agencies of the United States and that the States have no power whatever to tax them without the permission of Congress.

Van Allen *v.* Assessors, 3 Wall. (U. S.), 573.
New York *v.* Weaver, 100 U. S., 539.
Citizens' Savings Bank *v.* Owensboro, 173 U. S., 636, 667,

that the States derive their power to tax National banks solely from the permission of Congress; that the permissive act of Congress, which alone confers and defines this power, is found in Section 41 of the National Banking and Currency Act, now Section 5219 of the Revised Statutes of the United States, and is as follows:

"Nothing herein shall prevent all the shares "of any association from being included in the "valuation of the personal property of the "owner or holder of such shares, in assessing "taxes imposed by authority of the State with- "in which the association is located: but the "Legislature of each State may determine and "direct the manner and place of taxing all the "shares of National banking associations lo- "cated within the State, subject only to the "two restrictions, that the taxation shall not "be at a greater rate than is assessed upon

"other moneyed capital in the hands of indi-
"vidual citizens of such State, and that the
"*shares of any National banking* association
"owned by non-residents of any State, shall be
"taxed in the city or town where the bank is
"located, and not elsewhere. Nothing herein
"shall be construed to exempt the real prop-
"erty of associations from either State, county
"or municipal taxes, to the same extent, ac-
"cording to its value, as other real property
"is taxed."

The Legislature of New York, instructed by a number of decisions of this Court,

> People *v.* Commissioners, 2 Black (U. S.), 620;
>
> People *v.* Commissioners, 2 Wall. (U. S.), 200;
>
> Van Allen *v.* Assessors, 3 Wall. (U. S.), 573;
>
> New York *v.* Weaver, 100 U. S., 539,—

succeeded at last in enacting a taxing law applicable to all banks, State and National, in substantial conformity with the language of the permissive Federal statute already quoted. As the State banks are taxed upon the same principles, the same valuations and at the same rate as the National banks, there is here no question of any discrimination against the First National Bank of Brooklyn in respect of a moneyed capital employed by other banks, so-called. But the eight trust companies of Brooklyn are not taxed as banks, but are taxed under the general law relating to the taxations of corporations. They are taxed on a different principle from the banks. The banks are taxed upon their shares, under a statute which allows personal deductions to the respective shareholders of their respective debts—a feature added to the taxing law with reference to banks, under

the compulsion of the decision of this Court in *New York* v. *Weaver*, 100 U. S., 539.

The trust companies, however, are taxed upon their capital, just as a manufacturing corporation is taxed—just as the Gas Light Company was, and should have been taxed, in the case of *People ex rel. v. Barker* (144 N. Y., 94).

They were assessed upon such principles and at such valuations that all their property except their real estate escaped taxation entirely, with the single exception of one small trust company, which was taxed upon a valuation of $6,361 only.

The Referee has found the aggregate value of the aggregate capital and surplus of the eight Brooklyn trust companies for the year 1897, as shown by their tax returns to have been $11,485,529.86; and a computation will show that the aggregate amount of their capital which would have formed the basis of the taxation of their shares, if their shares had been assessed upon the same principle as the shares of the National banks, would have been $11,035,529.85. All this escaped taxation, except the paltry sum of $6,361. If the trust companies had been taxed in respect of their shares, on the same principle as the National banks, 33 per cent. of this amount would probably have been "sworn off" by their shareholders by reason of their individual indebtedness; for this was the average per cent. that was "sworn of" by the shareholders of the twenty-one Brooklyn banks for the taxing year 1897, as shown by the table ("Exhibit No. 1, Defense") on pages 108 and 109 of the Record. If we deduct this percentage from the aggregate taxable capital of the trust companies, we have left the great sum of $7,393,805.01. *This entire sum with the exception of $6,361 escaped taxation.* On the other hand, the five National banks of Brooklyn were assessed theoretically

upon their shares, the assessment being, however, paid by the respective banks, after their shareholders had "sworn off" their respective indebtedness, in the sum of $2,228,958; and the State banks were, in like manner, after the "swearing off" of their respective debts by their shareholders, assessed in the sum of $2,116,564; so that the aggregate amount of moneyed capital in respect of which the twenty-one Brooklyn banks, State and National, were assessed, amounted to $4,345,422. While these banks, many of them small ones, bore taxation on this great aggregate, the trust companies, as we have seen, escaped taxation altogether, with the exception of the small item of $6,361, already mentioned.

See the table, Record, pp. 108, 109.

State these figures in any way, turn them around and view them from any standpoint, and the conclusion cannot be escaped that one class of corporations engaged, in respect of nearly all their assets in the business of banking, escaped taxation entirely, while the other banks were taxed in respect of a greater part of their capital. These financial institutions, the one class enjoying a total immunity from taxation, except upon their real estate, the other class thus heavily taxed, were situated in the business centre of the same city, with one or two small exceptions, and were competing with each other in the use of money as capital, in the business of receiving deposits of money, and of lending out money on collateral or on personal security at interest; or, what is substantially the same thing, buying notes at a discount, or a "shave," for profit. This unjust discrimination—so great as to partake of the nature of criminality—was deliberately inflicted under the law of New York; it was sanctioned by that

law. A greater injustice—a greater outrage under the forms and sanctions of law—could scarcely be imagined. Upon the face of these plain figures, can the Court doubt that the shares of the First National Bank of Brooklyn were taxed at a greater rate than that imposed on other moneyed capital in the hands of individual citizens of this State?

II. The case of Mercantile Bank v. New York Distinguishable from the Case at Bar.—All the judicial officers who took part in the decision of this case in the various Courts below founded their conclusion against the relators on the authority of the decision of this Court in *Mercantile Bank v. New York*, *121 U. S.*, *138*. We concede that if that decision is a controlling authority for the decision of the case at bar, then we have no right to be here. But it will indisputably appear from an examination of this record that the relators made out an essentially different case from the Mercantile Bank case, and a case on which they believe they are entitled to invoke the judgment of this Court in their favor. In the first place, the Mercantile Bank case was a case which was presented upon an agreed statement of facts, and it is subject to all the infirmities which attach to agreed cases. It will appear from an examination of that case in comparison with the record in this case, that counsel in that case neglected to enlighten the Court as to the manner in which the trust companies in New York employ their capital, but left that to be inferred by the Court from an examination of the then statute law conferring powers upon trust companies. In the agreed statement of facts in that case

there is not a line nor a word as to the extent to which the trust companies then doing business in the City of New York, which was the taxing district in that case, employed their capital in the mere business of banking. On the other hand, it is submitted that the record in this case conclusively shows that the eight trust companies in the then city of Brooklyn, at the time when the tax sought to be relieved against was laid upon the shares of these relators, having a capital and surplus amounting in the aggregate to between eleven and twelve million dollars, were engaged almost exclusively in the business of banking, so much so that their so-called trust business was a mere bagatelle of the general volume of their business. This being so, they were, under the very language used by this Court in the Mercantile Bank case, using moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States. Pursuing the language of this Court, it conclusively appears that they received money on deposit and invested it in loans, and therefore dealt in money and in securities for money in such a way as properly to bring the shares of stock held by individuals therein within the definition of "moneyed capital" in the hands of individuals, as used in the Act of Congress,

> Mercantile Bank v. New York, 121 U. S., near the bottom of page 159,

and they were using almost their entire capital and surplus in this way, and were, hence, essentially banks; and the conclusion is unavoidable that they were competing with the national banks of Brooklyn in the ordinary business of banking, and the referee erred in refusing so to find.

The very next sentence in the opinion of this Court furnishes the keynote to the decision

in the Mercantile Bank case. Counsel for the plaintiff in that case were equally unfortunate in failing so to construct the agreed statement of facts as to show that the rate of taxation applied to the trust companies was less than that imposed upon shares of stock in the national banks. All this was left blind, and to be inferred from an examination of statutes. This Court after thus conceding that trust companies engaged in banking "were employing moneyed capital in such a way that their shares were to be deemed moneyed capital in the hands of individuals, within the meaning of the Act of Congress, said: "But we fail to find in the record any sufficient ground to believe that the rate of taxation, which in fact falls upon this form of investment of moneyed capital, is less than that imposed upon shares of stock in national banks." Then, after referring to the tax laws of New York applicable to the subject as construed by the Court of Appeals of that State, this Court proceeded to say further: "It is evident, we think, that taxation in this mode is, at least, equal to that upon the shares of individual stockholders; for if the same property was held for the same uses and taxed by the same rule, in the hands of individuals, as moneyed capital, it would be subject to precisely the same deductions; in addition to which the individual would be entitled to make a further deduction of any debts he might owe. Upon these grounds, therefore, we are of opinion that this mode of taxing trust companies does not create the inequality which the appellant alleges."

Mercantile Bank v. New York, 121 U. S., at pages 159 and 160.

The present record shows precisely the contrary. It shows that, as between the national banks and

the trust companies there was nothing in respect of the modes of taxation applied to the two classes of institutions which this Court has denominated an "equivalency" of taxation. It shows that they were taxed under different laws; that the national banks were taxed in respect to their shares, while the trust companies were taxed in respect of their capital under a statute under which manufacturing companies are taxed; that the trust companies enjoyed an exemption from taxation in respect of so much of their capital and surplus as was invested in non-taxable securities of the United States and in other non-taxable bonds, and in respect of amounts due their depositors, and also in respect of ten per cent. of their capital stock, while in assessing the shares of the national banks for taxation no such deductions were made; and that the result was, as shown by the evidence and found by the referee, that "all of said trust companies, by reason of said deductions, were wholly free from assessment for taxation on their capital stock, except in the case of the said Nassau Trust Company, the capital stock of which was assessed at $6,361."

Referee's Finding, XXIV; Record, pp. 53, 54.

The disparity of the assessment, as between the trust companies and the national banks for the year in question, will be thrown into clearer light from the reading of the finding of the referee, No. XXVII,

Record, pp. 54, 55,

where it appears that the eight trust companies of Brooklyn, upon an aggregate value of capital, surplus and undivided profits amounting to $11,485,529.86, escaped taxation entirely except in respect

of the sum of $6,361; whereas the shareholders of the National and State banks of Brooklyn, upon an aggregate share valuation as fixed by the Board of Assessors for the taxing year in question, amounting to $6,495,100, after allowing deductions in respect of the individual indebtedness of the shareholders, were taxed upon the aggregate sum of $4,345,522. Thus, it appears, that while the trust companies wielded in capital, surplus and undivided profits nearly twice as much money in their banking business as the national banks of Brooklyn, yet the trust companies paid taxes on a little more than $6,000, assessed against one small trust company, while the shareholders of the national banks paid taxes on nearly four and one-half millions, the exact figures being $4,345,522. In the face of these startling figures can this Court say, as it said in the Mercantile Bank case, "We fail to find in the record any sufficient ground to believe that the rate of taxation, which, in fact, falls upon this form of investment of moneyed capital, is less than that imposed upon shares of stock in national banks." Can this Court conclude—pursuing further its language in that case —"That this mode of taxing trust companies does not create the inequality which the appellant alleges?"

This Court, in the Mercantile Bank case, *was in error as to the methods used by the assessors in New York* in ascertaining the value of the capital, surplus and undivided profits of a trust company. The Court says:

> "The actual value of the whole capital stock "is ascertained by a reference, among other "standards, to the market price of its shares so "that the aggregate value of the entire capital "may be the market price of one multiplied by "the whole number of shares."
>
> 121 U. S., 138, 160.

The Court then quotes Oswego Starch Factory *v.* Dolloway, 21 N. Y., 449, and People *v.* Commissions, 95 N. Y., 554.

This Court was justified in supposing that the market price of the shares in a trust company was a factor in determining the value of the capital of a trust company under the decisions quoted and other decisions of the Court of Appeals of New York, up to the year 1887, when the Mercantile Bank case was decided. But in 1891 the Court of Appeals of New York overturned this line of decisions in the celebrated case of the *People ex rel. Union Trust Company v. Coleman*,

126 N. Y., 433.

In that case the broad general rule to be applied in determining the value of capital stock was laid down as follows, on page 439:

> "There are reasons in abundance for the con-
> "clusion that by the phrase capital stock the
> "statute means *not the share stock*, but the
> "capital owned by the corporation, the fund
> "required to be paid in and kept intact as the
> "base of the business enterprise and the chief
> "factor in its safety. One ample reason is de-
> "rived from the fact that the tax is assessed
> "against the corporation and upon its prop-
> "erty, and not against the shareholders and
> "so upon their property. In theory every tax
> "is charged against some person, natural or
> "artificial, resident or non resident, known or
> "unknown. * * * Of course, it could only
> "be assessed and taxed in respect to its own
> "property, that which in its corporate charac-
> "ter it owned and possessed; and so it follows
> "inevitably that the statute concerns the
> "company's capital stock, that is, its real and
> "actual capital, *and not in any respect the*
> "*share stock which it does not own and*
> "*whose possessors have not been assessed.*"

The Court of Appeals of New York then pro-

ceeds to review and distinguish both of the cases cited by the Supreme Court of the United States, one of them on page 441 and the other on page 444.

It thus appears that this Court was proceeding on an erroneous theory in reaching the conclusion it did reach. This Court was fully justified in supposing that if, as indicated by these desisions, the New York assessors took into consideration the market price of the shares of a trust company, it would reach an amount of assessment substantially the same as though the shares were valued and taxed in the hands of the individual owners. But the Court of Appeals of New York having taken a new and radical departure four years subsequent to the decision in the Mercantile Bank case, and having laid down a rule which has resulted in these trust companies practically escaping taxation, the Mercantile Bank case must be clearly distinguished from the case at bar. This new departure of the Court of Appeals of New York was taken at the suit of one of the large New York trust companies, and, under the decision then made, the trust companies have ever since almost wholly escaped taxation, as indicated by the record in this case.

This Court says, in concluding its opinion regarding trust companies:

> "*Upon these grounds*, therefore, we are of opinion that this mode of taxing trust companies does not create the inequality that the appellant alleges."

We have thus shown that the two main premises taken by this Court regarding trust companies have now changed so as to be wholly favorable to the contention of the relators, and the conclusions arrived at in the Mercantile Bank case should, therefore, it is submitted, be held not to be binding in this case.

Since the Mercantile Bank case was decided, and prior to the time when the tax in controversy was assessed, the statute law of New York was so amended as to clothe the trust companies of that State with all the powers of banks, except the power of issuing circulating notes.

This Court in the *Mercantile Bank case* derived its conclusions of fact from an examination of the law. No facts were agreed upon as to how the trust companies in the State of New York, or in the taxing district of New York City, employed their capital, whether in banking or otherwise; but it was agreed "that any statutes of the United States, or of the State of New York may be cited and relied upon before the said Court, as if herein fully set forth."

> Mercantile Bank v. New York, 121 U. S., p. 144.

This Court thereupon, it seems, examined the statute law of New York, relating to trust companies, for the purpose of ascertaining and deciding the question of fact as to how they employed their capital, and whether they employed it in the business of banking, and hence in competition with the National Banks. "Trust companies," said this Court, "in New York, according to the powers conferred upon them by their charters and habitually exercised, are not in any proper sense of the word banking institutions. They have the following powers: To receive moneys in trust and to accumulate the same at an agreed rate of interest; to accept and execute all trusts of every description committed to them by any person or corporation; to receive the title to real and personal estate on trusts created in accordance with the laws of the State, and to execute such trusts; to act as agent for

corporations in reference to issuing, readjusting and transferring certificates of stock and bonds and other evidences of debt; to accept and execute trusts for married women in respect to their separate property, and to act as guardian for the estates of infants. It is required that their capital shall be invested in bonds and mortgages on unencumbered real estate in the State of New York worth double the amount loaned thereon, or in stocks of the United States or of the State of New York, or of the incorporated cities of that State. It is evident, from this enumeration of powers, that trust companies are not banks in the commercial sense of that word, and do not perform the functions of banks in carrying on the exchanges of commerce."

Ibid., p. 159.

It thus appears that, no facts having been agreed upon or proved in the Mercantile Bank case as to how the trust companies of New York actually employed their capital, *this Court went to the laws of New York to find out what the facts were.* Although the statute law of New York had been, subsequently to the Mercantile Bank case and prior to the date when the present controversy arose, changed so as to confer upon trust companies in New York the usual powers of banks except the issuing of circulating notes, in other words so as to confer upon them the powers exercised by the State banks in that State,

New York Laws 1892, c. 689, § 156,—

as hereinafter set out; yet, ignoring this change in the law—ignoring the conceded fact disclosed by this record that the Brooklyn trust companies were exercising the powers conferred upon them,

Record, p. 78,

and that they were essentially banks, and that nearly all their business was that of banks,—nevertheless, all the judicial officers who took part in the decision of this case, from the referee to the Court of Appeals, ignoring the uncontroverted facts of this record—ignoring or attempting to explain away the change in the law, preferred to get the facts upon which to decide this case from the facts of the Mercantile Bank case, which facts, as just seen, this Court got from the law. This Court then got its facts from the law, and the New York judicatories in the case at bar got their facts from this Court, although the law had been amended so as—if law can create facts—to create an entirely new state of facts, and although the evidence in this case indisputably showed a state of facts contrary to that which this Court derived from the law in the Mercantile Bank case.

We know that laws, as well as constitutions, "march." Like modern corporations, they "migrate." They travel. They have no "commorancy." They "ambulate." Like errors, they "creep." They wriggle They crawl. But their vermiculations cannot always be traced. Their movements justify the observation of a great German poet, thus translated:

> "Laws, like inherited disease, descend,
> "And slyly wind their way from age to age,
> "And glide, almost unseen, from place to place."

But if laws, in thus descending, in thus winding their way, in thus gliding unseen, are permitted to carry a load of facts on their backs, then the celebrated lines will have to be paraphrased thus:

> "*Facts*, like inherited disease, descend,
> "And slyly wind their way from age to age,
> "And glide, almost unseen, from place to place."

If judicial officers can deliberately lay aside and ignore the facts of the case before them and go to another case for the facts on which to decide the case in hand, go to another case decided long before; to a case with which the parties to the present case were in no sort of privity; go to that case to get their facts; then, what are we coming to? Is there to be any end to fantastic novelties in judicial administration?

The doctrine of *stare decisis* does not extend to the decision of mere questions of fact; the doctrine of *res judicata* does. If the rule of *stare decisis* extended to the decision of questions of fact, then it would extend to the verdicts of juries, and it would make the verdict of a jury in a controversy between Smith and Jones, conclusive upon the whole world, and it would make such a verdict furnish a test by which to determine the rights of all mankind. The bare statement of such a proposition shows its absurdity. The question of fact decided in *Mercantile Bank* v. *New York*, was decided for the purposes of that litigation only and for the purpose of disposing of the rights of the parties to that record only. As to the parties to this record, it is *res inter alios acta* and of no effect whatever. But here, if the New York judicatories are correct, the facts discovered in one case are to govern the rights of the whole world, and throughout the mutations of all time.

Since the rendition of the decision in the Mercantile Bank case the Statute Law of the State of New York has been changed so as to confer upon trust companies all the essential powers of banks except the issuing of circulating notes, which power a State bank could not exercise because of the taxing clause in the National banking law;

and it stands admitted by the respondents (defendants-in-error here) upon this record, that the eight trust companies of Brooklyn were in the exercise of all the powers conferred upon them by the Statute Law of New York. The language of this admission by the learned counsel for the respondents (defendants in-error here) is again called to the attention of tnis Court. "I concede that these trust companies, and every trust company exercises all the powers conferred upon it by Statute."

Record, top of p. 78.

Now what were these powers?

By the New York Banking Law of 1892, Laws 1892, ch. 689, § 156, trust companies organized under the statute have the power:

* * * * * *

"2. To *receive deposits* of trust moneys, securities, and other personal property from any person or corporation, and to loan money on real or *personal security*.

* * * * * *

"9. *To purchase, invest in* and *sell stocks, bills, of exchange, bonds, mortgages* and *other securities;* and when moneys or securities for moneys are borrowed or *received* on *deposit*, or for investment, the bonds or obligations of the company may be given therefor; but it shall have no right to issue bills to circulate as money."

By Section 162 of the same statute, "every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter, and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered company." This statute was enacted

after the decision of the Supreme Court of the United States in *Mercantile Bank* v. *New York*, 121 U. S., 138, which was rendered in 1887.

By the statute amendatory of the New York "Act in relation to Banking Corporations,"

New York Laws of 1893, Ch. 696, § 3,

Section 156 of Chapter 689 of the Banking Law of 1892 is so amended as to confer upon trust companies the following powers:

"11. To exercise the powers conferred on individual banks and bankers by Section 55 of this act, subject to the restrictions contained in said section."

On turning to Section 55, here referred to, we find that it provides:

"Every bank and individual banker doing business in this State may *take*, *receive*, *reserve* and *charge* on *every loan* or *discount made*, or *upon any note*, *bill of exchange*, or *other evidence of debt*, interest at the rate of six per cent. per annum; and such interest may be taken in advance, reckoning the days for which the *note*, *bill*, or *evidence of debt* has to run."

Then follows a statement of the penalties denounced for taking usurious interest, and then the following:

"The *purchase*, *discount*, or *sale of a bona fide bill of exchange*, *note*, *or other evidence of debt*, payable at another place than the place of such purchase, discount, or sale at not more than the current rate of exchange for sight drafts, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than six per cent. per annum. The true intent and meaning of this section is, to place and continue

banks and individual bankers on an equality in the particulars herein referred to, with the national banks organized under the act of Congress entitled, 'An Act to Provide a National Currency, Secured by Pledge of United States Bonds, and to Provide for the Circulation and Redemption Thereof,' approved June 3, 1864."

By the express words of the statute of the State of New York, Trust Companies are here put on an equality with National Banks with respect to great and important banking powers.

Here is a grant, by the most necessary implication, of the *power* to *loan money*, to *discount notes, bills of exchange*, and *other evidences of debt*, and *to purchase, discount* and *sell bills of exchange* or *other evidences of debt*. By enacting a statute which, in express terms, makes trust companies subject to these regulations, the legislature intends that such companies already possess, or shall possess, the powers which the statute assumes to regulate; since it would be absurd for the legislature to enact a statute with express reference to trust companies, regulating the exercise of a power by them which the legislature has never conferred upon them. Under the maxim of statutory construction *ut res magis valeat quam pereat*, statutes are construed so as to save all their parts, and so as to ascribe a meaning to every portion of them when it can possibly be done; but, as this is a separate section in the amendatory statute, standing alone and relating to a subject which has no reference to the other portions of the amendatory act, the refusal to ascribe to trust companies the powers which this section assumes to regulate in their hands would have the effect of striking the section out of the statute—in other words, not merely of refusing to give effect to all the parts of a statute, but of destroying the statute

entirely—turning it into absurdity—rendering it totally nugatory—striking it out of existence.

The cases are numerous where powers have been ascribed to corporations by the operation of acts of the legislature which merely recognize the existence of such powers in such corporations.

> Shaw *v.* Norfolk R., &c. Co, 5 Gray (Mass.), 162, 179; Richards *v.* Merrimac, &c., R. Co., 44 N. H., 127, 136.

And there are cases where, in the entire absence of proof of a charter creating a corporation, or of its formation under a general enabling act, its *de facto*, and even its *de jure* existence, has been proved by acts of the legislature which necessarily recognize such existence.

> Comanche County *v.* Lewis, 133 U. S., 198; Com. *v.* Westchester Co., 3 Grant Cas. (Pa.), 200; Atkinson *v.* Bemis, 11 N. H., 44; Colburn *v.* Ellenwood, 4 N. H., 101; Meade *v.* New York, &c., R. Co., 45 Conn., 199; McCauley *v.* Columbus, &c., R. Co., 83 Ill., 348, 352; White *v.* Ross, 4 Abb. App., Dec. (N. Y.), 589; Atlantic, &c., R. Co. *v.* St. Louis, 66 Mo., 228; Jameson *v.* People, 16 Ill., 257.

It is further submitted that this statutory enumeration of powers embraces all the ordinary business of banking, except the issuing of notes intended to circulate as money. In respect of this office of issuing circulating notes, all State banks are placed on the same footing by the taxing clause of the National Banking Act, which was intended to drive the currency of the State banks out of ex-

istence, and which has notoriously accomplished that purpose. In the case on the State taxation of national banks which influenced the decision of all the judicatories of the State of New York which took part in the decision of the case at bar, it is said: "The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money, where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the Government, State and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it, in the eye of this statute, 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress."

Mercantile Bank *v.* New York, 121 U. S., 138, 156.

And this Court held in that case that, as the New York trust companies did not carry on these operations—at least as the principal part of their business—they were not in competition with the banks within the meaning of the Federal statute in question. That case, as we have said, was decided upon an agreed statement of facts. There was not one word in that agreed statement as to the nature of the business carried on by the New York trust companies. The Court inferred the nature of that business wholly from the statute of New York—

as it then existed, in the year 1887—defining the powers of trust companies. We have now shown that trust companies have the power, under the present statute law of New York, to carry on all the functions of banking except the issue of circulating notes; and it was admitted in this case at the hearing before the Referee, by counsel for the respondents, that they exercise all the statutory powers which they possess.

Record, pp. 78, 79.

And, in point of fact, it was proved that almost the entire volume of their business was banking, pure and simple, and that but a small fraction of it was the business appropriate to trust companies—that is, acting as trustee for individuals, corporations, widows, orphans, litigants, etc.

But if we rest the question, as did this Court, upon their statutory powers merely, we shall see that they possess every power enumerated by that Court as going to make up "the business of banking."

"The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money, where the banks are banks of issue." But no State bank, as just seen, has that power in point of fact. "*In receiving deposits, payable on demand.*" The power to receive deposits is expressly conferred by the language above quoted, and it has been shown that by far the greater portion of the deposits of three of the leading Brooklyn trust companies are so payable—not five per cent. being trust deposits. "*In discounting commercial paper.*" This power is conferred upon trust companies in this State by the words "to purchase, invest in and sell stocks, *bills of exchange*, bonds and mortgages and *other securities*," there being, as shown by

the evidence in this case, no substantial distinction between discounts and purchases. It is also conferred, by the clearest implication, in the language above quoted from original Section 55, ascribed by the amendatory act to trust companies. "*Making loans of money on collateral security.*" This power is expressly conferred in the language of Subsection 2 above quoted, "to loan money on real or personal security," to say nothing of the language of original Section 55 expressly ascribed to trust companies by the amendatory act. "*Buying and selling bills of exchange.*" This power is conferred by Subsection 2, above quoted, the language being "to purchase, invest in and sell stocks, *bills of exchange*," etc. "*Negotiating loans and dealing in negotiable securities issued by the Government, State and national, and municipal and other corporations.*" All these powers are conferred in the language of Subsection 9, above quoted, "to purchase, invest in and sell stocks, bills of exchange, *bonds* and *mortgages* and other securities." And this Court adds: "These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute, 'moneyed capital.' *Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress.* * * * The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals *in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money.* The moneyed capital

thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are, from time to time, according to the rules of the business, reduced again to money and reinvested."

Mercantile Bank *v.* New York, 121 U. S., 138, 156, 157.

The evidence in this case precisely and pointedly shows that nearly all the capital employed by the Brooklyn Trust Companies is used in the way described by this language, and there is not a scintilla of evidence to the contrary.

This Court then, from one of its previous decisions,

Evansville Bank *v.* Britton, 105 U. S., 322,

gave the definition of "moneyed capital," within the meaning of Section 5219 of the Revised Statutes of the United States, as follows: "Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly, there may be said to be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. But the rights, credits, demands and money at interest mentioned in the Indiana statute, from which *bona fide* debts may be deducted, all mean moneyed capital invested in that way."

"This definition," add the Court in the later case, "of moneyed capital in the hands of individuals, seems to us to be the idea of the law, and ample enough to embrace and secure its whole purpose and policy."

Mercantile Bank *v.* New York, 121 U. S., 136, 157.

Everyone of these powers, thus enumerated as the business of banking and ascribed to National banks, is not only possessed, under the law of New York, by trust companies, but, in point of fact, nearly all the capital of the eight Brooklyn trust companies—at least ninety-five per cent. of it—was employed in exercising these very powers; and the capital so employed was "moneyed capital," and, as such, was employed in direct competition with the "moneyed capital" employed in the same way by the National banks.

It is then submitted that, this Court having, in the Mercantile Bank case, inferred from the then state of the statute law of New York, with respect to trust companies, the manner in which those companies employed their capital, with the conclusion that they were not banks in the commercial sense of the word, this Court should now, by the same process of reasoning, infer that the trust companies of New York were, at the time when this controversy arose, essentially banks in the commercial sense of the word, and employed their capital in the ordinary operations of banking, and hence in competition with the First National Bank of Brooklyn, wherein these relators (plaintiffs in error here) are shareholders. We more especially ask this in view of the concession made at the trial before the Referee by counsel for the respondents (defendants in error here), that every trust company exercises all the powers conferred upon it by statute.

Record, p. 78.

If, in construing the above Statutes, the New York judicatories have held that they did not operate to confer upon the eight trust companies of the then City of Brooklyn the banking powers which this record incontestably shows they were

habitually exercising, then our contention is that a Federal right cannot be stricken down by the erroneous decision of a State Court in construing a State Statute; but that, where a right under a Statute of the United States is involved, this Court will not be bound by the decision of a State Court in construing its own Statutes, as it would where the question presented is a question of ordinary municipal law; but that it will look to its real meaning independently of the State Court, and will give effect to its real meaning in so far as it may be necessary to preserve the Federal right.

> Huntington v. Attrill, 146 U. S., 657, 683, 684.
>
> Mobile, &c., R. Co. v. Tennessee, 153 U. S., 486, 492.
>
> Scott v. McNeal, 154 U. S., 34, 45.
>
> Jefferson Bank v. Skelly, 1 Black (U. S.), 436, 443.
>
> Douglas v. Kentucky, 168 U. S., 458, 502.

Ideas are sometimes clarified by looking at a question from a new point of view. In the case of *State v. Lincoln Trust Company*,

> 144 Mo., 562, 585,

the Supreme Court of Missouri, finding that certain trust companies, organized under the Missouri statute, were engaged in banking, and that the Missouri statute was substantially the same as the New York statutes described in the Mercantile Bank case,

> Mercantile Bank v. New York, 121 U. S., 138,

followed the decision of this Court in that case,

wherein it held that the trust companies of New York were not banks in the commercial sense of the word, and did not perform the functions of banks in carrying on the exchanges of commerce. *It therefore ousted said trust companies of the exercise of the banking powers which they had usurped.* Suppose that the Missouri statute had been amended as the New York statute has been amended since the decision in the Mercantile Bank case, by adding the qualifying clauses hereinbefore set out, would or could the decision of the Missouri Supreme Court have been a judgment ousting them of their banking powers? How could a Court, in a proceeding brought by the Attorney-General, oust a corporation of powers the possession of which the Legislature had expressly recognized and regulated? Could any Court on earth grant or sanction such a judgment? Looking at the case from this point of view, putting the question to this test, the mind is overwhelmingly impressed with the conclusion that, in the year 1897, under the statute law of New York, relating to trust companies, as thus amended, the eight Brooklyn trust companies were rightfully exercising the banking powers which constituted nearly all their business. They were not only banking corporations *de facto*, but they were such *de jure*. But what difference could it make to these relators whether they were rightfully or wrongfully exercising those powers? So long as the State of New York permitted them to exercise those powers and at the same time to escape taxation upon their capital, their surplus, and their undivided profits, while it laid a heavy tax upon the shares of the National banks, were not the shareholders of the National banks taxed at a greater rate than the taxation of other moneyed capital in the hands of individual citizens

of the State within the same taxing district, within the same taxing district, within the language and meaning of Section 5219 of the revised statutes? It was the *fact* and not the *theory* from which they suffered.

The case at bar is, therefore, distinguishable from the Mercantile Bank case upon four vital grounds:

The case at bar is, therefore, distinguishable from the Mercantile Bank case upon four vital grounds:

1. It was not shown in the Mercantile Bank case that the trust companies within the taxing district were essentially banks and that the principal part of their business was mere banking; it was so shown in this case with respect to the trust companies within the then City of Brooklyn, which was the taxing district.

2. It was not shown in that case that, if the trust companies were banks, there was any inequality of taxation as between them and the shareholders of the national banks, prejudicial to such shareholders; it was shown in this case that there was such an inequality, and so great as to leave the shareholders in the national banks heavily taxed, while the trust companies enjoyed substantially a total exemption from taxation, except upon their real estate.

3. This Court, in deciding the Mercantile Bank case, proceeded upon an error of fact as to the methods used by the tax assessors in New York in ascertaining the value, for the purposes of taxation, of the capital, surplus and undivided profits of the trust companies, which mistaken premise led to the mistaken conclusion that the mode of

taxing trust companies did not create the inequality, as between them and the national banks, which the appellant alleged in that case; whereas the record in this case shows that it does create that very inequality.

4. Since the Mercantile Bank case was decided, and prior to the time when the tax in controversy was assessed, the statute law of New York was so amended as to clothe the trust companies of that State with all the powers of banks, except the power of issuing circulating notes.

III. All of the Trust Companies in the City of Brooklyn Enjoyed a Statutory Exemption of Ten Per Cent. of the Amount of their Capital, and this Exemption was not Enjoyed by Banks. Under the doctrine laid down in *Whitbeck* v. *Mercantile Bank* (127 U. S., 193), a difference of *five per cent.* in the valuation of the capital of National Banks over that of other personal property was held to be an unlawful discrimination. This statutory discrimination in the New York State law has never before been challenged in any Court, so far as we are aware.

It is purely arbitrary; it is based upon no conceivable principle of justice or equality. It is "*an unfriendly discrimination*" within the language of this Court.

Adams v. Nashville, 95 U. S., 19.

It is an exemption from taxation of "*a very material part, relatively*, of other moneyed capital in the hands of individual citizens within the same

jurisdiction or taxing district," within the language of another decision of this Court.

Boyer v. Boyer, 113 U. S., 689, 693.

It is an exemption of "*a very material portion of other moneyed capital* in the hands of individual citizens and corporations," within the language of this Court in the same case.

Boyer v. Boyer, 113 U. S., 689, 694.

It is an "inequality so palpable as to show that *the discrimination* against capital invested in such [national bank] shares *is serious*;" and, therefore, "the Courts have *no discretion but to interfere*."

Boyer v. Boyer, 113 U. S., 701.

Can this Court read the disclosures of this record with regard to the enormous business of mere banking carried on by the Brooklyn trust companies and entertain any doubt upon this question?

Why should the shareholders in the Brooklyn Trust Company, with its nearly eleven millions of general individual deposits,

Record, p. 49,

enjoy this arbitrary exemption from taxation, and the shareholders in the First National Bank (relators and plaintiffs in error here) not enjoy it?

Why should the shareholders of the Hamilton Trust Company, with its more than four million dollars of "indebtedness due depositors,"

Record, p. 53,

enjoy this exemption and we not enjoy it?

Why should the shareholders of the People's

Trust Company with its general deposits in the aggregate of nearly six million dollars, and its amount of trust funds less than three hundred thousand dollars,

Record, p. 55,

enjoy this exemption, and we not enjoy it?

Why should the Franklin Trust Company with its more than five million dollars of general deposits and less than two hundred thousand dollars of deposits in trust,

Record, p. 55,

enjoy this exemption, and we not enjoy it?

Why should the Manufacturers' Trust Company with its more than two and one-half millions of general deposits and its less than twenty-five thousand dollars of deposits in trust,

Record, p. 56,

enjoy this exemption, and we not enjoy it?

Why should the other three Brooklyn Trust Companies, engaged there in the business of banking, enjoy this exemption, and we not enjoy it? As between a manufacturing corporation or a gas light corporation and a national bank, this exemption might not be regarded as fatal; but as between financial institutions competing with each other in the business of banking, in the same taxing district, how can it be regarded as other than a taxation of one class of such institutions which does not enjoy this exemption, "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," within the meaning of Section 5219 of the Revised Statutes of the United States?

IV. The Referee Found, in Substance, though not in Form, that the Shares of the Eight Trust Companies of the then City of Brooklyn were "Moneyed Capital" in the hands of Individual Citizens of the State of New York, within the Meaning of Section 5219 of the Revised Statutes of the United States, and Judgment is Invoked on that Finding.—It is true that the Referee refused, in the findings which he was requested to make, to use the words "moneyed capital," but changed it to "money as capital."

Record, p. 54,

yet the two expressions mean essentially the same thing; and hence the findings as made by him are the findings upon which we were entitled to invoke the favorable judgment of the Court below, and on which we are entitled to invoke the favorable judgment of this Court. These findings as thus changed by the Referee read as follows:

> "XIV. That the following trust companies "did business within the City of Brooklyn "where the said First National Bank of Brook- "lyn is located, namely:
>
> "[Reciting the names of the eight trust "companies of Brooklyn]; and the capital "stock of said trust companies is divided into "shares, and is owned and held by various "individuals and corporations residing in the "Borough (late City) of Brooklyn and else- "where; and the said trust companies and "the stockholders therein *use money as "capital.*"

This finding, as the Referee was requested to make it by the relators (plaintiffs in error here),

had for the concluding words "used and employed *moneyed capital*,"

Record, p. 48.

The other requested finding, as thus charged by the Referee and then found by him, was as follows:

> "That the owners and holders of the shares "of the capital stock in each and all of such "trust companies within the State of New York "are 'individual citizens' using and employing "'money' for profit by its use as money. That "the shares of stock of such trust companies "in the hands of the owners or holders thereof "are exempt from taxation under Subdivision "16, of Section 4, of 'the Tax Law,' Chapter "908 of the Laws of 1896 of the State of New "York, which reads at follows: 'The owner "or holder of stock in an incorporated com- "pany liable to taxation on its capital shall "not be taxed as an individual for such "stock.' "

Record, p. 54.

Unless there is some deep and metaphysical distinction between using "money as capital," as changed in the first of these findings, and using and employing "moneyed capital;" and using and employing "money" for profit by its use as money, and using and employing "moneyed capital" for profit by its use as money, then we are entitled to invoke the favorable judgment of this Court upon these findings, as the Referee changed them and as they stand. It is submitted that there is and can be no distinction between using and employing "moneyed capital" and "using money as capital;" nor any distinction between employing "moneyed capital" for profit by its use as money, and using and employing money for profit by its use as money. The change of expression made by the Referee involves no change of meaning. The

two forms of expression conduct the mind essentially to the same thing. No difference of meaning between the two expressions can be imagined. If the eight trust companies of the taxing district of the then City of Brooklyn were using money as capital, then they were necessarily using it in competition with the national banks; and if they were using money "for profit by its use as money," then the same conclusion undissuadably forces itself upon the mind. What casuistry, what subtlety, what metaphysical aid, what hairsplitting, can discover any difference between these forms of expression and lift this case out of the inevitable conclusion where the fanciful changes made by the Referee have landed it and left it. The definition made by this Court of the meaning of the expression "moneyed capital," as used in Section 5219 of the Revised Statutes of the United States, affords no ground for such a fanciful distinction; but the use of "money" by the trust companies which the Referee has above found, answers absolutely to that definition.

Mercantile Bank v. New York, 121 U. S., 138, 156, 157.

V. Error of the Referee in Holding "as Matter of Fact" that the Eight Trust Companies of Brooklyn were not in Competition with the National Banks of Brooklyn.—The fifth assignment of error made by the plaintiffs in error in this Court is in the following language: "That the Court below erred in sustaining so much of the report of the Referee where in he found, 'as matter of fact,' on the evidence before him, that the trust companies

therein named were not in competition with National Banks within the sense and meaning of the words of Section 5219 of the Revised Statutes of the United States, so as to make their shares of stock 'other moneyed capital in the hands of individual citizens.' *The finding was not a 'matter of fact,' but was a conclusion of law* to be drawn from established facts, involving the interpretation of the Federal Statutes; hence the plaintiffs in error are not concluded in this Court by the frame of language employed by the Referee in making this finding.

It is, of course, understood that this Court does not, on a writ of error, weigh conflicting evidence. It is prohibited by Statute from doing so.

Rev. Stats., U. S., § 1011.

But in construing this Statute this Court has used the following language:

"If the finding depends upon the weighing of "conflicting evidence, it was a decision on the "facts, the revision of which is forbidden to this "Court by Section 1011. If the question was "whether all the evidence was sufficient in law to "warrant a finding for the plaintiff, he should "have presented that question by a request for a "definite ruling upon that point."

Martinton v. Fairbanks, 112 U. S., 670, 672.

That is precisely what the relators (plaintiffs in error here) did in the present case. The Referee was requested to make, but refused to make, the following finding:

"The moneyed capital thus used and employed "by said trust companies and the stockholders "therein, is invested for that purpose in securities "by way of loan, discount and otherwise, which "are from time to time, according to the rules of

"business, reduced again to money and reinvested. "The said trust companies are corporations in "which individual citizens own the shares of stock, "and the capital of said companies, employed in "carrying on its business, is money, and the ob- "ject of such business is the making of profit by "its use as money; and the said trust companies "and the stockholders therein so using and em- "ploying moneyed capital as aforesaid come into "direct competition with the national banking "associations and the stockholders therein in "their use and employment of moneyed capital."

Record, p. 49.

There was a mass of evidence, oral and statistical, delivered before the Referee, supporting this finding, and there was not a word, nor a line, nor a hint in opposition to it; nor was there any suggestion of infirmity or partiality on the part of any of the witnesses, three of whom were the presumably disinterested officers of trust companies. Some of their testimony is largely in the language of the above requested finding.

See the testimony of Mr. Sniffen, Record, p. 78; of Mr. Cowing, Record, p. 79; of Mr. Johnson, Record, pp. 79, 80.

These three officers of trust companies testified they they carried on their banking business substantially as the banks do, lending money on collateral security and buying commercial paper. A form of collateral note used by one of them in lending money was put in evidence,

Exhibit 10, Record, p. 105,

and is similar, though more detailed, than one which was used by one of the Brooklyn national banks.

Exhibit 9, Record, p. 104.

For the statistical evidence which was offered by the relators (plaintiffs in error here), and received by the Referee, for the purpose of showing that the trust companies of Brooklyn employed their capital chiefly in banking and only to a small extent in trust business, three representative trust companies were selected, and their condition on the first day of May, 1897, the day fixed by law for assessing property for taxation, was disclosed in dollars and cents. They were great trust companies, as shown by the figures, and may be presumed to be representatives of the others. According to the evidence and the findings of the Referee, the People's Trust Company held on that day:

Trust funds amounting to.....	$272,918.52
General deposits.....	5,038,623 64
Time certificates...	30,424.30
Demand certificates of deposit.....	833,989.06

Record, p. 55.

Against this it had loaned out on collateral the enormous amount of.....	$3,901,689.88
Amount loaned on personal security, including bills purchased.....	302,896.55

Record, p. 55.

General deposits.....	$5,038,623.64
Time certificates.....	30,424.30
Demand certificates of deposit.....	833,989.06
Making a total of deposits of.....	$5,903,037.00

The Court will no doubt take judicial notice that all the words in this statement are the ordinary words employed in banking except those relating to the trust funds held by the company. A calculation will show that *less than five per*

cent. of this great volume of deposits consisted of trust funds, and that *more than ninety-five per cent.* of them consisted of mere banking deposits.

According to the evidence and the findings of the Referee, the Franklin Trust Company had, on the same day:

Deposits in trust	$ 187,162.93
General deposits	5,013,703.02
Amount loaned on collateral	$1,721,932.44
Amount loaned on personal security, including bills purchased	505,996.05

Record, p. 55.

A similar calculation will show that, against this more than five million dollars of general deposits, this company had *less than four per cent.* of deposits in trust, and *more than ninety-six per cent.* of general deposits; while it had loaned out on collateral more than a million and a half, and on personal security, including bills purchased, four hundred and sixty thousand and odd dollars.

In like manner the finding of the Referee, based upon uncontroverted evidence, shows that the Manufacturer's Trust Company had on the same day:

Deposits in trust	$23,443.89
General Deposits (including time and demand certificates)	2,661,466.82
Amount loaned on collateral	$1,236,521.25
Amount loaned on bond and mortgage and bills purchased	359,120.88

Record, top of p. 56.

A calculation will show that this trust company, with more than two millions and a half of

general deposits (including time and demand certificates), had of deposits in trust *less than one per cent.* of this amount, that is to say, its general deposits were *more than ninety-nine per cent.* of all its deposits. Against this it had loaned on collateral one million two hundred and thirty-six thousand and odd dollars, and on bond and mortgage and bills purchased three hundred and fifty-nine thousand and odd dollars.

And yet, in the face of these undisputable figures, the Referee refused the finding above set out, to the effect that the trust companies were not in competition with the national banks in the business of banking. A trust company whose trust business is in volume less than five per cent. of its banking business, another trust company whose trust business is less than four per cent. of its banking business, and another trust company whose trust business is less than one per cent. of its banking business, are not in competition with a national bank situated in the same city and taxing district. In the aggregate, less than four per cent. of the business of these three great trust companies was trust business: the rest, more than ninety-six per cent. in the aggregate, was banking business: and yet they were not in competition with the national banks in the business of banking! No.

It is submitted that the findings of the Referee that there was no such competition, and his findings of the statistical facts with regard to the business of these three great trust companies are absolutely contradictory and self-stultifying, and consequently that the Court below erred in confirming those findings.

If it is suggested or argued that these three trust companies ought not to be regarded as representa-

tive of all the Brooklyn trust companies, and that the above statistics of these three companies ought not to carry the conclusion that all the Brooklyn trust companies were, on the date in question, engaged chiefly in the business of banking and but little in the business of taking care of trust funds, then we say that the tax returns of at least two of the other five trust companies, made for that year to the Board of Assessors of the City of Brooklyn, as found and set out in detail by the Referee, tell the rest of the story.

> The tax returns of all of the eight Brooklyn trust companies, made to the Board of Assessors of the City of Brooklyn for the year 1897, as found and set out by the Referee, are given on pp. 49 to 53 of the Record.

The Brooklyn Trust Company, the largest of all the Brooklyn trust companies, returned as "general individual deposits" the enormous sum of $10,739,505.13.

Record, p. 49.

The Hamilton Trust Company returned as "indebtedness due depositors" the great sum of $4,316,996.37.

Record, top of p. 53.

Two others of the five not previously considered did not return the amounts due depositors, but returned merely "general indebtedness,"

Record, p. 50,

or "indebtedness," in amounts not so large, but perhaps equally large relatively to their gross assets; and the last of the eight did not return any indebtedness,

Record, p. 53,

and was the only one which suffered any taxation on its capital, and that only on the sum of $6,361.

Record, p. 50.

If any significance can be given to these tax returns, then we must conclude that the Referee has found that a trust company having nearly eleven million dollars in "general individual deposits," and another trust company having nearly four and one-half millions of "indebtedness due depositors," are not in competition with the National banks of Brooklyn in the business of banking.

VI. Disparity of Assessment between the Brooklyn Trust Companies and the National Banks.

It will be recalled that this Court in the case of *Mercantile Bank v. New York*,

121 U. S., p. 159.

while conceding that the trust companies received money on deposit, invested it in loans, and so dealt, therefore, in money and securities for money in such a way as properly to bring the shares of stock held by individuals therein within the definition of moneyed capital in the hands of individuals as used in the Act of Congress—nevertheless said: "But we fail to find in the Record any sufficient ground to believe that the rate of taxation which, in fact, falls upon this form of investment of moneyed capital, is less than that imposed upon shares of stock in national banks." That the record did not show that there was any discrimination, or any unfriendliness as to taxation in favor of the State trust companies as against the national banks. That was the deduction of this Court in the entire absence of specific facts. With the

glaring array of facts before him already set out, the *Referee in the present case, and all the judicatories* of the State of New York which followed him and affirmed his conclusion, took the same view. The Referee said: "Admitting this, however [that the coin held by the First National Bank of Brooklyn was a part of its capital invested in non-taxable property], it might be stated that the deduction allowed trust companies by Section 12, Article 1, Chapter 908, of the [New York] Laws of 1896 (General Tax Law), and not National Banks, would render the rate of taxation unequal; but in view of the Tax Law [of New York], Article 9, whereby it appears that trust companies pay a franchise tax, while banks do not, and in view of the restrictions of the banking law upon investments and use of their capital and money by trust companies, which do not apply to National banks,—it cannot be said that the Legislature has, for this reason only, discriminated against National banks in favor of trust companies, within the decisions of the United States Supreme Court."

Record, p. 101.

It is submitted here that the very contrary can be said, and upon the facts of this record must be said. It should also be remembered that this view of the Court in the Mercantile Bank case was also based on an erroneous understanding of the method of assessment in New York State prior to the decision in the Union Trust Company case (126 N. Y., 433).

What was this franchise tax which is supposed to offset the other gross inequalities of taxation disclosed by this record? This record does not show the amount of it which was assessed against

each of the eight Brooklyn trust companies for the taxing year 1897; but this Court can look to the Statute under which it was assessed and draw its conclusion, as it did in the Mercantile Bank case. It was a tax of "*one-quarter mill upon the capital stock for each one per centum of dividends;*" and if no dividends have been declared, then a tax of *one and a half mills upon each dollar of valuation of capital stock* made in a prescribed manner. An infinitesimal tax. To avoid any mistake as to this, the statute is below set out:

"The Tax Law," Chapter 908, Laws of New York "of 1896, § 182 reads: "FRANCHISE TAX ON CORPORATIONS. Every corporation, joint stock company or association incorporated, organized, or "formed under, by or pursuant to law in this State, "shall pay to the State Treasurer annually an annual tax to be computed upon the basis of the "amount of its capital stock employed within this "State and upon each dollar of such amount "at the rate of one quarter of a mill for each one "per centum of dividends made and declared upon "its capital stock during each year ending with the "31st day of October, if the dividends amount to "six or more than six per centum upon the par "value of such capital stock. If such dividend or "dividends amount to less than six per centum on "the par value of the capital stock, the tax shall "be at the rate of one and one-half mills on such "portion of the capital stock at par as the amount "of capital employed within this State bears to the "entire capital of the corporation."

There are other provisions designed to reach non-dividend paying corporations which do not affect the trust companies, all of which pay large dividends.

The conclusion is unavoidable that the amount of this franchise tax, laid in that year against each of the Brooklyn trust companies, must have been a mere bagatelle; not more than enough to

offset the small Federal tax which the National banks pay upon their circulation.

VII. The Assessment in this Case is Void, for the Reason that the National Banks were Assessed upon a Different Principle from that on which the Trust Companies were Assessed.

Having shown that the trust companies of Brooklyn are banks to all intents and purposes, using their money precisely as banks do, it follows under the interpretation of Section 41 of the National Banking and Currency Act (Rev. Stat. U. S., Sec. 5219), as made by this Court in the leading case of *Van Allen* v. *Assessors*,

3 Wall. U. S., 573, 581,

that the tax laid upon the shares of the relators in this case is wholly void, for the reason that they were taxed on a different principle, under a different scheme of taxation, and under a different taxing law from that employed in the case of the trust companies existing and doing business within the same taxing district. In the case just cited, a statute of New York, called "The Enabling Act," was held not to conform to the Federal statute just referred to, by reason of this defect, as stated in the opinion of this Court, delivered by Mr. Justice Nelson:

> "One of the limitations in the act of Congress is 'that the tax so imposed under the laws of any State shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.'"

It will be recalled that this proviso was in the National Banking Act (Section 41) as originally enacted, but was left out of the act as amended; but it is submitted that the difference is immaterial, since the act as amended retains the clause, "but not at a greater rate than is assessed upon other moneyed capital of individual citizens in such State," and that the principle laid down governs. "The Enabling Act of the State," said Mr. Justice Nelson, "contains no such limitation. The banks of the State are taxed upon their capital; and, although the act provides that the tax on the shares of the national banks shall not exceed the par value, yet, inasmuch as the capital of the State banks may consist of the bonds of the United States which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

Van Allen *v.* Assessors, 3 Wall. (U. S.), 573, 581.

By parallel reasoning it may be said that the trust companies of this State are taxed upon their capital, and that the taxing act applicable to the national banks does not limit the taxation of their shares to their par value, but taxes them at their actual value, which may be, as in the present case, greatly in excess of their par value; and that the capital of the trust companies may, and largely does, as shown by this record, consist of the bonds of the United States, which are exempt from State taxation. "It is easy to see that this tax upon the capital of the trust companies is not an equivalent for a tax on the shares of the stockholders" [of the national banks]. This record discloses as a fact that the two forms of taxation are not in any sense or to any degree equivalent for each other. The

trust companies enjoy the following exemptions which the national banks do not enjoy: ten per cent. of their nominal stock; all of their assets which are invested in United States bonds; all of their assets which are invested in other non-taxable bonds. On the other hand, under the taxing law applicable to banks, as interpreted by the Court of Appeals of New York and as actually administered by the taxing officers of New York, everything is thrown together that can swell the aggregate *de facto* capital of the National bank; its nominal capital, its surplus, its reserve fund, the actual value of its real estate; and from this aggregate one item alone is deducted, namely, the assessed—not the actual—value of its real estate. The aggregate capital remaining is apportioned upon the shares by dividing it by the whole number of the shares; and the tax, as so apportioned, is collected from the bank. The result, roundly stated, is that the National banks are heavily taxed, while the trust companies escape taxation entirely, except in respect of their real estate.

The decision in *Van Allen* v. *Assessors* has always been followed by this Court. The principle there declared is that a State taxing law which taxes National banks on one principle and State banks on a different principle, which *may* result in an inequality as between them, is void, as being in contravention of the National Banking Act, which is the supreme law of the land, any State law to the contrary notwithstanding. The trust companies are banks; they are taxed upon a different principle from the National banks, and this *does* result in an inequality of taxation as between them. The doctrine of *Van Allen* v. *Assessors*, therefore, necessarily ends this case in favor of the relators (plaintiffs in error here).

VIII. The Court below Erred in Overruling an Exception Made by these Relators (Plaintiffs in Error in this Court) to the Ruling of the Referee wherein he Refused to Allow the said Relators to show that the National Banks existing in the City of Brooklyn, in Point of Fact, Suffered from the Unfriendly Competition of the Trust Companies Existing in that City.

At the hearing before the referee, in the examination of Mr. W. Addison Field, cashier of the First National Bank, whose shareholders these relators are, the following questions were asked:

"Did your bank, at any time within the last ten years, commence paying interest to depositors?"

This question was admitted by the referee notwithstanding the objection and exception of counsel for the respondent, and the answer was "yes."

Record, p. 76.

Then the two following questions were asked and excluded:

"Q. What induced your bank to take that action?"

"Q. Up to the time when you began to allow interest on deposits, had there been an increase or falling off in your deposits?"

Record, p. 77.

Nor would the Referee allow Mr. Charles D. Young, who was president of the National City

Bank of Brooklyn, to answer the following question:

"Q Has your bank suffered any in its deposits by reason of the competition of the trust companies, Mr. Young?"

Record, p. 75.

After thus excluding evidence tending to show that the National Banks of Brooklyn were suffering from the competition of the trust companies of Brooklyn, the learned Referee decided that there was no such competition, because this Court had so decided under a different statute, and without any evidence before it, ten years before. It is submitted that the relators had the right to give any evidence of circumstances tending to show that the two classes of moneyed institutions were in such competition. That the error is vital will sufficiently appear from other considerations already submitted.

IX. The Fact that Banks and Trust Companies are Competitors in Business, and yet are Taxed with Gross Inequality, is a Matter of Common Notoriety and has been Frequently Commented upon by the Commissioners of Taxes and Assessments of the City of New York in their Published Reports Made from Time to Time to the Mayor of the City under the Requirements of Section 1544 of the Greater New York charter.—These official comments were not read in evidence before the Referee on the trial on this case; they are not therefore referred to here as strictly evi-

dentiary documents. The attention of the Court is merely called to them by way of argument, and we ask leave to submit them, very much as we might read or quote a paragraph from the official report of an adjudicated case, or the opinion of an Attorney General, or other public officer. They are as follows:

From the Report of the Commissioners of Taxes and Assessments of the City of New York for the year 1898 (page 22):

"While the banks are assessed to the individual "shareholders on the actual value of their share "stock, the trust companies, who are their com- "petitors in business, are assessed as a corporation "and are permitted to invest their assets in non- "taxable securities, and also allowed the deduction "of their debts, and otherwise permitted by law to "avoid just taxation. These conditions should be "corrected."

From the Report of the same Tax Commissioners for the year 1899 (page 30):

"As part of this report we again refer to one of the inequalities of the law enumerated in our previous reports," viz.:

"While the banks are assessed through the in- "dividual shareholders on the actual value of their "share stock, the trust companies, who are their "competitors in business, are assessed as a cor- "poration, and are permitted to invest their assets "in non-taxable securities, and also allowed the "deduction of their debts, and otherwise permitted "by law to avoid just taxation. These conditions "should be corrected. Perhaps the conditions "above referred to may account for the wonder- "ful increase of trust companies in this city dur- "ing the past year; and although their capital "has been increased, $14,850,000, yet this depart- "ment cannot expect to show any appreciable in- "crease in their valuation because of the aforesaid

"conditions. We reiterate that such conditions "should be corrected, and recommend that the "laws of assessment applicable to banks be ap- "plied to trust companies."

From the Report of the same Tax Commissioners for the Year 1900 (page 39):

"Subjoined is a comparative statement of "the assessment of banks and trust companies "in Manhattan and Brooklyn, the relative "inequality of which is clearly evidenced, as "these interests, being financially analogous, "should be similarly assessed. We have here- "tofore in our reports made special note of this "inequality; therefore without further com- "ment, we now submit the following summary, "the basis of which is the report of State "Superintendent of Banks, dated December 27, "1899, and the Report of the Comptroller of "the Currency, dated September 7, 1899:

	Banks.	Trust Companies	Totals	Percentage of each class	
				Bks.	Tr. C
"Captial Stock,	$ 83,124,700	$44,900,000	$128,024,700	65%	35%
"Capital Stock and surplus. "Dec. 31, 1899,	168,410,808	126,670,594	295,081,402	57	43
"Market value of capital, 1899, "based upon selling values of "stock in the open market,	253,083,500	225,137,500	478,221,000	53	47
"Aggregate value of resources, "1899,	1,277,450,061	628,606,870	1,906,056,931	67	33
"Total profits for the year 1899	*10,526,637*	*31,517,897*	*42,044,534*	*25*	*75*
"Dividends paid from above "in 1899,	*6,180,016*	*5,507,500*	*11,687,516*	*53*	*47*
"Total sum in taxes paid on "personal property, 1899,	*1,865,160*	*159,030*	*2,024,249*	*92*	*8*

From the Report of the same Tax Commissioners for the Year 1901 (page 33):

> "For years this Department has been "directing attention to the inequality which "existed between the banks and trust com- "panies, and claimed that the relative ine- "quality, which was clearly evident, should no "longer be allowed to exist, as these interests, "being financially analogous, should be simi- "larly assessed. The Legislature has under- "taken to bring that result about in such a "manner as may lead to a worse condition than "existed before, if certain rights claimed by "the shareholders of the bank stock are al- "lowed by law."

We respectfully submit, that if what is here stated as a glaring fault of the tax system by the taxing officers of the great City of New York be true, the Court must find in favor of the relators (plaintiff in error here).

This constant complaint of the tax commissioners has at last resulted in the enactment of a uniform law taxing banks and trust companies at the same rate; the tax on the banks being in form against their share stock to attempt to comply with the United States statute.

> Chapter 535, Laws 1901 of New York.
> Chapter 550, Laws 1901 of New York.

It is worthy of note that in enacting a general banking law the Legislature of New York saw fit to include the trust companies therein.

> "The Banking Law" of New York State, Ch. 689, §§ 150–163.

Relief Prayed for in this Court.

It is therefore submitted that the judgment of the Supreme Court of New York, entered in pursuance of the mandate of the Court of Appeals of that State, should be reversed.

By the Tax Law of New York (Chapter 908 of the Laws of 1896, Sec. 253), it is provided that "if it shall appear upon the return to a writ of "certiorari, that the assessment complained of is "illegal or erroneous or unequal for any of the "reasons alleged in the petition, the Court may "order such assessment, if illegal, to be stricken from "the roll, or if erroneous or unequal, it may order "a re-assessment of the property of the petitioner, "or the correction of his assessment upon the roll, "in whole or in part, in such manner as shall be in "accordance with law, or as shall make it conform "to the valuations and assessments of other prop-"erty upon the same roll, and secure equality of "assessment."

This Court has, of course, the same power in directing the judgment which should be entered. This assessment is "illegal," within the meaning of the above statute, as distinguished from an erroneous assessment; and therefore the order of this Court should be that the assessment be stricken from the tax roll of the City of Brooklyn (now a part of the City of New York), for the year 1897.

The plaintiffs in error therefore pray this Court to direct the Supreme Court of New York for Kings County, to enter a final order or judgment striking from the tax roll the assessment for taxes laid against these relators (plaintiffs in error), as shareholders of the First National Bank of Brooklyn, for the taxing year 1897, as being wholly illegal and void by reason of the fact that such tax assessed was at a

greater rate that was assessed upon other moneyed capital in the hands of individual citizens in the State of New York, within the same taxing district. But if this Court should be in doubt upon the question whether the First National Bank of Brooklyn, whereof these relators (plaintiffs in error) are shareholders, did in fact suffer from unfriendly competition on the part of the eight trust companies within the same taxing district, then the plaintiffs in error pray that this cause may be remanded, with directions to the Court below to grant a new trial to the plaintiffs in error.

Respectfully submitted,

FRANK HARVEY FIELD,
Attorney for Plaintiffs in Error.

SEYMOUR D. THOMPSON,
Of Counsel.



No. 198

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 198.

JOHN G. JENKINS AND OTHER DIRECTORS AND PUBLIC OFFICE SUCCESSORS OF THE FIRST NATIONAL BANK OF HUDSON,

Plaintiffs-in-Error,

vs.

BARZILLAI G. HUNT, PRESIDENT, AND JOHN SCHLICHER, JR., ET AL., CONSTITUTING THE BOARD OF ASSESSORS OF THE CITY OF ROCHESTER AND THE TAXING YEAR 1897,

Defendants-in-Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AND BRIEF OF THE DEFENDANT-IN-ERROR.

GEORGE L. RIVES,
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Attorney for Defendants-in-Error,
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JAMES McKEEN,
Of Counsel.

(6618) MARTIN B. BROWN CO., Printers and Stationers, 49 & 51 Park Place, New York.

Supreme Court of the United States.

OCTOBER TERM, 1901.

PEOPLE *ex rel.* JOHN G. JENKINS and others, stockholders of First National Bank of Brooklyn,

Plaintiffs-in-Error,

against

BARZILLAI G. NEFF, President, and JOHN H. DRESCHER, Jr., *et al.*, Assessors, constituting the Board of Assessors of the City of Brooklyn for the taxing year 1897.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

This is a writ of error bringing up for review a final order of the Supreme Court of New York, entered upon a remittitur from the Court of Appeals, which affirmed the judgment of the lower courts confirming an assessment made by the officials of the then City of Brooklyn in 1897 upon the shares of stock of the First National Bank of Brooklyn. The proceedings in the State courts were

upon a writ of certiorari issued to review that assessment. Under the State practice in such cases, the matter was sent to a Referee to take proof and report with his opinion. Upon the coming in of the Referee's report it was modified in certain particulars not here relevant, and as so modified was confirmed by Mr. Justice Hirschberg of the New York Supreme Court, whose opinion will be found on page 82 of the record, preceding the order entered upon his direction on page 89 of the record. This order was unanimously affirmed by the Appellate Division of the Supreme Court upon the opinion of Mr. Justice Woodward, printed at page 110 of the record, the order of affirmance being printed at page 117. Upon appeal to the Court of Appeals the order was again affirmed upon the opinion of Mr. Justice Bartlett, printed at page 119 of the record, the final order entered upon the remittitur being printed at page 126 of the record.

The ground of objection to the assessment is that it was in violation of the requirement of section 5219 of the U. S. Revised Statutes that the taxation of shares of stock in national banks "shall not be at a greater rate than is "assessed upon other moneyed capital in the hands of "individual citizens." It is difficult for the plaintiffs-in-error to point out any specific statute of the State of New York that is repugnant to this statute of the United States, for the reason that section 24 of the New York Tax Law as to the taxation of shares of stock in national banks exactly complies with the conditions prescribed by said section 5219. The contention, therefore, must be that the Assessors, in pursuance of "an authority exer-"cised under" the State of New York, have in some way transgressed the provisions of the Federal statute; and the point mainly, if not wholly, relied upon in support of this contention is that the method pursued by the Assessors in taxing certain trust companies of the City of Brook-

lyn operated as an unlawful discrimination against the shareholders of this national bank.

The counsel for the plaintiffs-in-error virtually concede (see p. 29 of their brief) that they have no standing unless they can succeed in distinguishing this case from the case of *Mercantile Bank* vs. *New York* (121 U. S., 138). The language of the brief is, "We concede that "if that decision is a controlling authority for the decision "of the case at bar, then we have no right to be here."

It will be mainly the effort in this brief to show that there is nothing in the record here which distinguishes the question now presented from that which was passed upon by this Court in the Mercantile Bank case.

The facts have been set forth with such amplitude in the somewhat voluminous brief of the plaintiffs-in-error that it would only be confusing to attempt here a detailed statement of them. So far as relevant, they can be more intelligibly referred to in the points which follow. The material facts of the case, and also the history of the New York legislation and of the course of judicial decisions on the question are set forth with great precision in the opinion of Mr. Justice Woodward at pages 110 to 115 of the record.

POINTS.

I.

The case of Mercantile Bank against New York remains a controlling authority in favor of the defendants-in-error.

The precise question there determined after the fullest consideration was that the methods adopted under the

Tax Laws in New York for assessing trust companies and the laws exempting savings banks from taxation are not repugnant to the requirement in section 5219 of the U. S. Revised Statutes that the taxation of shares of stock in national bank associations "shall not be at a greater rate "than is assessed upon other moneyed capital in the hands "of individual citizens of such state."

It is now claimed here by the plaintiffs-in-error that the Mercantile Bank case was decided upon an agreed statement of facts differing from the facts established by the evidence in this record as to these Brooklyn trust companies. It is further claimed that certain statutes on the subject, passed by the New York Legislature since the decision of the Mercantile Bank case, must be taken as modifying the force of that decision. The learned counsel for the plaintiffs-in-error wholly misinterpret the evidence in the record bearing upon the business conducted by the Brooklyn trust companies. In brief, the argument urged by counsel is that, whereas in the Mercantile Bank case this Court assumed and held that the banking part of the business of trust companies was merely ancillary to their business as trustees and guardians of estates, it is now shown, as to these particular trust companies in Brooklyn, that their banking business was their chief business, the other being trifling and incidental. It is repeatedly stated throughout the brief of counsel for the plaintiffs-in-error that these Brooklyn trust companies used their capital and surplus in direct competition with the First National Bank. It is said that during the period in question substantially their entire assets were devoted to an ordinary banking business; that they did everything a bank does, except to issue circulating notes, and did little or nothing else. These assertions are predicated upon a total misapprehension of what the record itself shows on this subject. The repeated assertions to the

effect that the trust business of these companies is trivial and incidental rests upon the testimony of certain officers of the trust companies (see p. 81 of the record).

This testimony was given in answer to questions asking for statements of the amount of money deposited with the companies. The answer, for example, of the secretary of the Franklin Trust Company gave the following figures:

Deposits in trust	$232,160 36
General deposits	5,110,335 39
Loaned on collateral	1,558,911 44
Loaned on personal securities, including bills purchased	460,291 20

The answers of the other officers of the trust companies examined showed a somewhat similar proportion between "deposits in trust" and general deposits. Of course, these items of "deposits in trust" did not include, and it was never for a moment suggested that they included, the millions in trust estates and other trust investments held and managed by the trust companies, to say nothing of the millions in mortgages which the trust companies hold as security for bonds issued by railroad companies and other mortgagors. The words "deposits in trust" mean only uninvested trust funds which are carried as deposits of money. The fact that the Brooklyn trust companies exercised all the powers given to them by the New York statutes was expressly stipulated in the record, and this general concession is frequently utilized by the counsel for the plaintiffs-in-error in their brief (Record, p. 78; Brief, p. 48).

The mistake is equally palpable in the repeated assertions that the trust companies used their capital in competition with the banks in making collateral loans and in

purchasing or discounting commercial paper. Such an assertion seems to have no support whatever in the record, except incidentally in the testimony of Mr. Sniffen of the *Manufacturers' Trust Company*. At page 78 of the record Mr. Sniffen says: "The capital of our company "consists of securities and are deposited by law, but the "capital was paid in money. We use our capital, surplus "and undivided profits for the purpose of making a profit "upon it from its use as money. When we make a loan "on collateral we use a collateral note." And he added further: "I was employed in the Chemical National "Bank for eight years. We keep deposits and pay out "money on checks in the Manufacturers' Trust Company "in the same manner as is done in the Chemical Bank. I "am familiar with the way in which the national banks in "New York City and Brooklyn do business, by reason "of my connection and association with them in business.

"*Q.* Does your trust company do business in the same "general way that the national banks do, of your own "knowledge?

"*A.* In banking, yes."

Of course, this testimony must be interpreted in accordance with the limitations clearly imposed by the New York statutes as to the capital of trust companies. The expression in the witness' testimony above quoted, "the "capital of our company consists of securities and are de-"posited by law," must itself be interpreted as excluding the idea that he meant to be understood as testifying that the trust company loaned out this capital to customers on collateral, or in discounting notes.

Section 159 of the New York Banking Law, which section re-enacts the statutes on the subject in force at the time of the decision in the Mercantile Bank case and was

the statute in force at the time of the making of the assessments here in question, provides:

> "The capital of every such corporation shall be "invested in bonds and mortgages on unincumbered "real property in the state worth at least double the "amount loaned thereon, or in stocks or bonds of "this state or of the United States, or of any county "or incorporated city of this state duly authorized "by law to be issued."

This requirement does not extend to the surplus of trust companies, but it affirmatively appears in the record here that not only was the entire capital of these trust companies invested in pursuance of the statute, as would in any event be presumed, but that the surplus of the companies was also very largely and in some cases entirely invested either in securities of this descrption or in stocks of other corporations taxed upon their capital (see Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, pp. 91 to 104 of the record).

Conceding, in the light of the numerous decisions of the Court on the subject, that investments in bond and mortgage, in government bonds and in State and municipal bonds, are to be regarded as "moneyed capital," it is nevertheless obvious that such "moneyed capital" of these trust companies invested in that manner did not and does not, in fact, come in competition with the national banks. Any attempt on the part of a trust company to loan out its capital on collateral or in the purchase of commercial paper would be a palpable violation of the statute. Trust companies can not even indirectly use the capital invested according to the requirements of the statute for anything that could be characterized as a banking business. The very purpose of the statutory requirement is to assure financial stability and to make the capital of such com-

panies a substitute for the security ordinarily required from individuals when appointed as trustees, guardians, executors, committees of lunatics, etc. (see section 158 of the New York Banking Law).

The gravamen of the complaint of the plaintiffs-in-error is that these trust companies escaped taxation on their capital by reason of the fact that both the capital and surplus were invested in securities which are exempt from taxation. This fact alone demonstrates, if further demonstration were needed, that the trust companies were not employing either their capital or surplus in competition with the national banks. They could not have obtained the allowance for exemptions complained of had their capital and surplus been used in making loans and in dealing in commercial paper, because such items of property are not exempt from taxation. The one most material distinction between trust companies and banks in the consideration of this question is that the banks are permitted to use their capital for distinctively banking purposes, including the right to issue circulating notes upon government bonds held by them, whereas the trust companies cannot do this. It will be seen by an analysis of the exhibits above referred to that, as a matter of fact, the money used by these trust companies in a banking business was in all cases less than the amount of money held by them on general deposit. It is true that money thus held by financial institutions on deposit has sometimes been spoken of as capital employed by them, but this is an inaccurate use of language. It confuses the word "capital" with the word "assets." There are no doubt cases where the word "capital" can be accurately applied to money that is in fact borrowed, but borrowed capital is money permanently borrowed for distinctive use as capital in a business. The word cannot with any propriety be applied to money deposited in a trust company and

payable on demand. No doubt the earning capacity of a financial institution is greatly increased by the volume of the deposits which it secures from customers. The volume of such deposits is dependent not only on the capital which the corporation has, but on the public confidence in its sound business administration. It is thus obvious upon the facts established in this record that the business of these trust companies was substantially the same as was stated by the Court in the Mercantile Bank case. This Court there said (121 U. S., at p. 159):

> "Trust companies, however, in New York, accord-
> "ing to the powers conferred upon them by their
> "charter and habitually exercised, are not in any
> "proper sense of the word banking institutions"
> etc.

The point is incidentally urged on behalf of the plaintiffs-in-error that Trust Companies are now and were in 1897 included in the general statute of the State of New York known as the "Banking Law." So also are Savings Banks, Building and Mutual Loan Corporations, Mortgage, Loan and Investment Corporations and Safe Deposit Companies. The previous statutes have simply been re-enacted, so far as the questions here involved are concerned, and these various kinds of financial corporations are for convenience grouped together in the new revision of the general statutes of the State under the title "Banking Law."

The only changes made in the statute law applicable to trust companies, upon which the plaintiffs-in-error found their contention that the force of the decision in the Mercantile Bank case is now inapplicable by reason of such changes, are two:

1. Chapter 696 of the Laws of 1893 amended section

156 of chapter 689 of the Laws of 1892 (the Banking Law) so as to confer upon trust companies the right * * *

"11. To exercise the power conferred on indi-
"vidual banks and bankers by section fifty-five of
"this act, subject to the restrictions contained in said
"section."

Section 55 of the act here referred to provides as follows:

"Every bank and individual banker doing business
"in this state may take, receive, reserve and charge on
"every loan or discount made or upon any note, bill of
"exchange, or other evidence of debt, interest at the
"rate of six per centum per annum, and such interest
"may be taken in advance, reckoning the days for
"which the note, bill or evidence of debt has to run."

Then follows a statement of the penalty for taking usurious interest, limiting it to forfeiture of twice the amount of interest, and then follow the words:

"The purchase, discount or sale of a *bona fide* bill
"of exchange, note or other evidence of debt payable
"at another place than the place of such purchase, dis-
"count or sale at not more than the current rate of
"exchange for sight drafts, or a reasonable charge
"for the collection of the same, in addition to the
"interest, shall not be considered as taking or receiv-
"ing a greater rate of interest than six per cent. per
"annum."

The true intent and meaning of section 55 was to place and continue banks and individual bankers on an equality in the particulars therein referred to with the national banks. This is the purpose declared in the act itself. The extraordinary argument is made by the learned counsel for the plaintiffs-in-error that the effect of this

act of 1893 was to confer on trust companies the right to discount commercial paper, which they did not before possess. The plain and sufficient answer to this argument is that the power given to banks to discount paper is not given by section 55 of the Banking Law, but by section 43 of the Banking Law, in article II., which article is expressly devoted to "Banks" properly so-called. Of course, the right of individual bankers to discount paper is not dependent on legislation, though such legislation may, no doubt, in proper cases, restrict its exercise.

The perfectly plain and obvious and only purpose of the Act of 1893 was to put trust companies, in addition to banks and individual bankers, upon an equality with the national banks in the matter of the usury laws. Prior to that legislation a violation of the New York usury law involved the forfeiture of the entire loan. Congress had relieved the national banks from this extreme penalty, and had also defined certain cases in which they might charge interest in advance, and might add the rate of exchange to the lawful rate of interest (U. S. R. S., secs. 5197–5198). The trust companies already possessed the power to purchase commercial paper, and the difference between purchase and discount may be conceded to be not very material. It suffices to say that if the trust companies can lawfully discount the notes of their customers, it is a power not given them by this statute.

2. Section 163 of chapter 689 of the Laws of 1892 provides that

> "every trust company incorporated by a special law
> "shall possess the powers of trust companies in-
> "coporated under this chapter and shall be subject
> "to such provisions of this chapter as are not incon-
> "sistent with the special laws relating to such
> "specially chartered company."

The obvious and only purpose of this was to conform the powers of specially chartered trust companies to the general law. It is impossible to discover in these acts anything which gave these Brooklyn trust companies in 1897 any powers materially different from those possessed by such companies at the time the Mercantile Bank case arose.

II.

The provision in the statute (section 12 of the Tax Law) which allows corporations, including trust companies, having a surplus exceeding ten per centum of their capital stock, a deduction of ten per centum of the capital in determining the amount of an assessment, can not be held to effect any unjust discrimination against the stockholders of national banks.

To render such a deduction as this a grievance to the plaintiffs-in-error here it must appear that such a deduction involved increasing the rate of taxation of the banks' stockholders beyond the rate imposed upon other moneyed capital in the hands of individual citizens.

It has already been shown that, as a matter of fact, the capital of these trust companies was not employed in competition with the capital of the national banks. It follows that the deduction made cannot be held to have affected the rate of taxation imposed upon individual holders of moneyed capital. It seems to have been thought by the Legislature that ten per cent. of the capital is a fair amount to allow for depreciation and loss. In arriving at the valuation the basis of the assessment actu-

N. B.

It is, however, an obvious error in assuming, as the court below did and as is inadvertently also stated in Point II of this brief, that the 4 per cent. deduction allowed by the assessors was only a deduction of 4 per cent. on the Bank's capital. It was in fact an allowance of 4 per cent. on the Bank's "loans and discounts." (See record, bottom of page 47 and bottom of page 73.) The actual deduction was $46.48 per share—that is to say, a total of $139,440, besides the appraised value of the real estate. This exceeded 10 per cent. on the entire capital, surplus, and undivided profits of the Bank, whereas the statutory allowance to the Trust Companies was limited to 10 per cent. of their capital only.

ally made of the stock of the plaintiffs-in-error here a similar deduction was made without any special warrant of law, amounting in the aggregate to some $18,000. Ten per cent. deduction would be $30,000. Even if the Court discover any injustice in this particular deduction, it would involve a modification of the assessment trivial in its application to the individual relators. It has been repeatedly held that an error, if it be an error, of this kind does not render an assessment void, but that the relief will be limited to the excess complained of when ascertainable (*Whitbeck* vs. *Mercantile Bank*, 127 U. S., 193, 195; *Pelton* vs. *National Bank*, 101 U. S., 143; *Supervisors* vs. *Stanley*, 105 U. S., 305; *Cummings* vs. *National Bank*, 101 U. S., 153). As is pointed out in the opinion of the State court (see pp. 116, 117) this deduction of ten per cent. has been the rule for nearly fifty years. It has never before been complained of as a discrimination against the shareholders of banks, national or city. It is a deduction which trust companies share with other corporations taxed on their property.

III.

There is no reason disclosed in the record in this case for questioning the correctness of the decision made by this Court in the case of the Mercantile Bank vs. New York.

That case has been repeatedly reaffirmed.

See particularly—

Newark Bank vs. *Newark*, 121 U. S., 163.
Davenport Bank vs. *Davenport*, 123 U. S., 83.
Bank of Redemption vs. *Boston*, 125 U. S., 60.

Palmer vs. *McMahon*, 133 U. S., 660.
Aberdeen Bank vs. *Chehalis County*, 166 U. S., 440.
Bank of Commerce vs. *Seattle*, 166 U. S., 463.

In the case of Aberdeen Bank *vs.* Chehalis County (166 U. S., 463) numerous decisions interpreting from various points of view the restrictions as to the power of the States to tax shares of national banks are reviewed, and the general principles laid down in *Mercantile Bank* vs. *New York* are adhered to. The Chehalis case is itself a controlling authority for the proposition that "moneyed capital" invested in mortgages and like securities is not moneyed capital in competition with that of national banks.

The only real point substantially urged against the course pursued by the Brooklyn Assessors is that in taxing the trust companies the latter were allowed to deduct not only their debts, but the items of their investments which are exempt from taxation; that is to say, government and municipal bonds, and stocks of other corporations, themselves subject to taxation; whereas the Assessors declined to deduct the United States bonds held by the First National Bank in arriving at the fair value of the stock of that bank. The point that the stockholders of national banks are not allowed the benefit of the deduction of government bonds held by the bank itself has been affirmed by this Court so often that the question can no longer be considered an open one (*Van Allen* vs. *Assessors*, 3 Wallace, 573; *People* vs. *Commissioners*, 4 Wallace, 244). The language of Mr. Justice Nelson in 3 Wallace, at page 584, has been repeatedly reaffirmed in later decisions:

> "The interest of the shareholder entitles him to "participate in the net profits earned by the bank

"in the employment of its capital during the exist-
"ence of its charter in proportion to the number
"of his shares, and upon its dissolution or termina-
"tion, to his proportion of the property that may
"remain of the corporation after the payment of its
"debts. This is a distinct, independent interest or
"property held by the shareholder like any other
"property that may belong to him. Now, it is this
"interest which the act of Congress has left subject
"to taxation by the States under the limitations pre-
"scribed."

Further, and in replying to the suggestion that the statute contemplated the taxation only of such part of the share stock as did not represent property of the bank invested in the securities of the United States, Judge Nelson said:

"If Congress had intended any such discrimina-
"tion it would have been an easy matter to have
"said so; certainly so grave and important a change
"in the use of this term, if so intended, would not
"have been left to judicial construction."

See also *Owensboro Bank* vs. *Owensboro*, 173 U. S., at p. 677.

In all these numerous decisions interpreting the restrictions in section 5219 of the U. S. Revised Statutes, the Court have pointed out that the prohibition imposed upon the States is that they shall not tax the shares of stock at a rate exceeding that imposed upon moneyed capital in the hands of individual citizens. And it has been held that the words "individual citizens" do not technically include corporations.

It is, therefore, only where it can be affirmatively shown that discrimination exists in favor of a corporation which is clearly and unmistakably using moneyed capital

in direct competition with national banks that this Court will look through the form of transaction and consider such moneyed capital so used to be the moneyed capital in the hands of the stockholders of such corporation as moneyed capital of "individual citizens." The New York Legislature have interpreted the restrictions in the spirit of these decisions and have accordingly taxed the shares of State banks in the same way that they tax the shares of national banks. The shares of State banks are, in other words, conceded to be moneyed capital in the hands of the individual citizens who own the stock, the assets of a State bank, including its capital and surplus, being in direct competition with the national banks. But this Court have repeatedly and affirmatively declined to hold that "all moneyed capital" in a State must be assessed in precisely the same method as the method pursued in assessing the stock of national banks; for example, in *Davenport Bank* vs. *Davenport* (123 U. S., at p. 85) the Court say:

> "It has never been held by this Court that the "States should abandon systems of taxation of their "own banks or of money in the hands of their other "corporations which they may think the most wise "and efficient modes of taxing their own corporate "organizations in order to make that taxation con- "form to the system of taxing national banks upon "the shares of their stock in the hands of their "owners. All that has ever been held to be necessary "is that the system of State taxation of its own "citizens, of its own banks, and of its own corpora- "tions shall not work a discrimination unfavorable "to the holders of the shares of the national bank. "Nor does the Act of Congress require anything more "than this. Neither its language nor its purpose can "be construed to go any further. Within these limits "the manner of assessing and collecting all taxes by "the States is uncontrolled by the Act of Congress."

See also, to the same purport, *Bank of Redemption* vs. *Boston* (125 U. S., p. 61) where it was held that the entire exemption from taxation of the assets of savings banks was not repugnant to the provisions of section 5219, although under the Massachusetts statutes savings banks were permitted to loan money upon the personal notes of their depositors.

It follows that the exemptions allowed by the Brooklyn Assessors to the trust companies were in no way repugnant to the restrictions of the Federal statute. As has often been pointed out, the exemption from taxation of municipal and State bonds is, in effect, a method whereby the municipality or State gets the benefit of a tax. They are enabled to issue their bonds for an amount exceeding by the amount of the tax rate what they would otherwise obtain. It is a familiar fact that trust companies are very large subscribers to municipal and State loans, and in paying the very high prices at which the municipalities and States are enabled to place their bonds and in accepting the very low rates of interest paid upon such bonds, the companies do, to all intents and purposes, pay a tax. It is furthermore true, as was pointed out in the Mercantile Bank case, that at the time the assessment here complained of was made, the trust companies were subject to the State franchise tax (New York Banking Law, secs. 182 and 183). This burden has been greatly increased by statutes since passed (chaps. 132 and 535, Laws of 1901). So far as the future is concerned the question in this case is an academic one. Under the provisions of the New York Banking Law, Section 24 (Laws of 1896, chap. 908), the individual stockholders of State and national banks are "allowed all the deductions and exceptions "allowed by law in assessing the value of other taxable "property owned by individual citizens." Accordingly

a very great number of stockholders of this national bank "swore off" these taxes (see record, pp. 39 and 108). This provision was incorporated in the New York law pursuant to the decision of this Court in *Supervisors* vs. *Stanley*, 105 U. S., 305, and *People* vs. *Weaver*, 100 U. S., 539.

They are permitted to deduct their entire indebtedness provided it has not been incurred for the purpose of evading taxation or incurred in the purchase of non-taxable property or securities (see section 6 of New York Tax Law, chap. 908 of the Laws of 1896). The result of this is that the individual shareholders of a national bank are put upon a substantial equality with all other taxpayers in the State, both individuals and corporations.

Reduced to its lowest terms the complaint of plaintiffs is that in arriving at the valuation put upon their stock the Assessors did not make a deduction of United States bonds held by the bank itself.

The exemption allowed to the trust companies of stock in other corporations subject to tax is not really an exemption. It is merely a method of avoiding double taxation. A trust company holding bank stock would have to pay on it like any other holder of such stock.

It is to be further noted that stocks of other corporations subject to tax are not in any sense "moneyed capital," and to the extent of such item in the trust companies' assets the stock of trust companies is in no sense "moneyed capital" in the hands of individuals.

IV.

There has been no change in the method of taxation of corporations under the decisions of the New York State Courts since the Mercantile Bank decision which works injustice to the stockholders in a national bank.

The suggestion is made in the brief of the plaintiffs-in-error that the New York Court of Appeals in the case of *People* ex rel. *Union Trust Co.* vs. *Coleman* (126 N. Y., 433) overturned previous rules and departed from the law on that subject as it was assumed to be by this Court in the Mercantile Bank case. It was rightly assumed in that case (121 U. S., p. 160) that it had been up to that time the practice of the New York Assessors to take into account, among other things, the market value of shares of stock in determining the taxable value of corporate property. And it is true that in the Coleman case above referred to the Court held that the market value of the shares was not a proper test of the value of the property held by a corporation. It is a well-known fact, often commented upon by the Courts in tax cases, that oftentimes the price at which stock may be selling in the market represents a value largely exceeding the proportionate value of the particular stock sold to the property of the corporation itself. Reasons why this may be so are very obvious. Sometimes, for the purpose of gaining some supposed advantage or corporate control, a very high price will be paid for limited quantities of stock offered in the market; very often the price of stock in the market goes to a very high figure and far beyond the actual value of the corporate assets, because of confidence in the corporation's future success. Earning capacity as well as tangible assets affect the market price of stock. This

change in the attitude of the New York Court of Appeals on this point has no bearing whatever in this case, for the reason, among others, that the Assessors here in reaching the value at which they assessed the stock of these plaintiffs-in-error adopted the changed rule. There is no evidence whatever in the record that the market price of the assessed stock was considered in fixing its value for purposes of taxation.

V.

The order of the New York Court should be affirmed.

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James McKeen,
Of Counsel.

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JAMES H. McKENNEY,

No. 198.

App. to Br. of D. in E.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Filed No. 198, Apr. 10, 1902.

JOHN G. JENKINS AND ONE HUNDRED AND FORTY OTHER STOCKHOLDERS OF THE FIRST NATIONAL BANK OF BROOKLYN,

Plaintiffs-in-Error,

against

BARZELLAI G. NEFF, PRESIDENT, AND JOHN DRESCHER, JR., ET AL., CONSTITUTING THE BOARD OF ASSESSORS OF THE CITY OF BROOKLYN FOR THE TAXING YEAR 1897,

Defendants-in-Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

APPENDIX TO THE BRIEFS OF THE PLAINTIFF-IN-ERROR AND THE DEFENDANT-IN-ERROR.

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Supreme Court of the United States.

JOHN G. JENKINS and one hundred and forty other stockholders of the First National Bank of Brooklyn,
Plaintiffs-in-Error,

against

BARZILLAI G. NEFF, President, and JOHN DRESCHER, Jr., *et al.*, Assessors, constituting the Board of Assessors of the City of Brooklyn for the taxing year 1897,
Defendants-in-Error.

Appendix to the briefs of both parties hereto, submitted for the further information of the Court, and containing the various statutes of the State of New York the consideration of which are involved in the matters at bar.

1. The statute under which trust companies were taxed in 1897—

Section 12, "The Tax Law," chapter 908, Laws 1896, of the State of New York:

Taxation of corporate stock.—The capital stock of every company liable to taxation, except such part of it

as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten percentum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

2. The statute under which banks were taxed in 1897—

"The Tax Law," chapter 908, Laws 1896, of the State of New York:

Sec. 13. Stockholders of bank taxable on shares.—The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

Sec. 24. Bank shares, how assessed.—In assessing the shares of stock of banks or banking associations, organized under the authority of this state or the United States, each stockholder shall be allowed all the deductions and exceptions allowed by law, in assessing the value of other taxable property owned by individual citizens of this state, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. In making such assessment, there shall also be deducted from the value of such shares a sum which bears the same proportion to such value as the assessed value of the real property of such bank or banking association bears to the capital stock thereof. This is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

3. The statutes under which this proceeding was instituted and conducted in State Courts—

Sections 250, 251, 252, 243 of "The Tax Law," chapter 908, Laws of New York, 1896:

Sec. 250. Contents of petition.—Any person assessed upon any assessment-roll claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that assessment has been made at a higher proportionate valuation than the assessment of other property on the same rolls by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

Sec. 251. Allowance of writ of certiorari.—Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which to return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ

shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

Sec. 252. Return to writ.—The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

Sec. 253. Proceedings upon return.—If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if legal, to be stricken from the roll, or if erroneous or unequal, it may order a reassessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court

shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment.

At and prior to the time of the decision in the Mercantile Bank case trust companies of New York existed under special charters. The enumeration of powers of such companies, recited in the opinion in that case (121 U. S., p. 159), was taken from separate charters.

The Brooklyn Trust Company is the only one of the Brooklyn companies which holds such special charter. It was granted by chapter 571, Laws of 1866, and amended from time to time (chap. 110, Laws 1868; chap. 853, Laws 1869; chap. 199, Laws of 1870; chap. 383, Laws 1877; chap. 112, Laws 1882).

In 1887 a general law was first passed for the incorporation of trust companies. That is below printed in parallel columns, with the statute in force at the time of the assessment here in question.

4. The powers of trust companies:

Powers of trust companies per chapter 546, Laws of 1887—	Powers of trust companies, as revised in chapter 689, Laws 1892—
Sec. 21. All trust companies organized under this act are hereby declared to be corporations possessed of the powers and functions of corporations generally, and as such shall have power:	Sec. 156. Powers of corporation. Upon the filing of any such certificate of authorization of a trust company, the persons named therein and their successors shall thereupon and thereby become a corporation, and in addition to the powers conferred by the general and stock corporation laws, shall have power:
1. To make contracts.	
2. To sue and be sued, complain and defend, in any court, as fully as natural persons.	
3. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, and transfer, register and countersign certificates of	1. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, and transfer, register

stock, bonds or other evidences of indebtedness.

4. To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

5. To lease, purchase, hold and convey any and all real estate necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation by any of its debtors.

6. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

7. To accept trusts from and execute trusts for married women, in respect to their separate property, whether real or personal, and to be their agent in the management of such property, or to transact any business in relation thereto.

8. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or any other person, corporation or party.

and countersign certificates of stock, bonds or other evidences of indebtedness.

2. To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

3. To lease, hold, purchase and convey any and all real property necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation by any of its debtors.

4. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

5. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

6. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

9. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate or property, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by the supreme court, or by any other court of record, or by any person, corporation, municipality or other authority, and the said corporation shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

10. To take, accept and execute any and all such trusts and powers, of whatever nature or description, as may be conferred upon or intrusted or committed to said company by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to or vested in said company, by order of the supreme court, or any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

11. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages, and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

7. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept and execute any and all such trusts and powers, of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

for, but nothing herein contained shall be construed as giving the right to issue bills to circulate as money.

12. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

10. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

11. To exercise the powers conferred on individual banks and bankers by section fifty-five of this act, subject to the restrictions contained in said section.

No such corporation shall have any right or power to make any contract, or to accept or execute any trust whatever, which it would not be lawful for any individual to make, accept or execute. No loan shall be made by any such corporation, directly or indirectly, to any director or officer thereof. No such corporation shall transact its ordinary business by branch office in any city not named in its certificate of incorporation or charter as the place where its business is to be transacted.

Section 55 of the Banking Law, referred to in the eleventh subdivision of the revised laws, reads as follows:

Sec. 55. Rate of interest.—Every bank and individual banker doing business in this state may take, receive, reserve and charge on every loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of six per cent. per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run.

The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover back twice the amount of the interest thus paid from the bank or individual banker taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a *bona fide* bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight drafts, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than six per cent. per annum.

The true intent and meaning of this section is to place and continue banks and individual bankers on an equality in the particulars herein referred to with the national banks organized under the act of congress entitled "An act to provide a national currency, secured by pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864.

5. Statute as to investment of capital of trust companies—

Banking Law, chapter 689, Laws of 1892:

Sec. 159. Investments of capital and deposits.—The capital of every such corporation shall be invested in bonds and mortgages on unincumbered real property in this state worth at least double the amount loaned thereon, or in the stocks or bonds of this state or of the United States, or of any county or incorporated city of this state duly authorized by law to be issued. The moneys received by any such corporation in trust may be invested in its dis-

cretion in the securities of the same kind in which its capital is required to be invested, or in the stocks or bonds of any state of the United States, or in such real or personal securities as it may deem proper. No such corporation shall hold stock in any private corporation to an amount in excess of ten per cent. of the capital of the corporation holding such stock.

6. The new statute of 1901 under which banks are now taxed—

Chapter 550, Laws of 1901, of the State of New York. An Act to amend the tax law relating to the taxation of the stockholders of banks and banking associations. Became a law April 25, 1901:

Sec. 2. Section twenty-four of article two of the tax law is hereby amended to read as follows:

Sec. 24. In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking association shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association, and by dividing the result by the number of outstanding shares of such bank or banking association. The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made

under the provisions of this act shall be heard and determined as provided in article two, section thirty-six, of the tax law. The said tax shall be in lieu of all other taxes whatsoever, for state, county or local purposes upon the said shares of stock, and the mortgages, judgments and other choses in action, and personal property held or owned by banks and banking associations, the value of which enters into the value of said shares of stock, shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties respectively, in which such shares of stock are taxable, the name of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this act, and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations, a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank or banking association, under the provisions of this act. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof, within fifteen days after the receipt by it of the statement of assessment and tax herein provided for; and any bank

or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock and on all property of the several share owners in its hands or which may at any time come into its hands for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts, respectively, under the provisions of this act, as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this act to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect the same, and to pay to

the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this act. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one percentum for collecting and paying out said monies, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the boards of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. All assessments of the shares of stock of banks and banking associations made on or after January first, nineteen hundred and one, and prior to the passage of this act, shall be null and void, and new assessments thereof shall be made agreeably to the provisions of this act. Provided, that in the city of New York the statement of bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes within fifteen days after the receipt of said statement, and said tax shall be collected by the said receiver of taxes, and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This act is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

The two new statutes of 1901 under which trust companies are now taxed—

Chapter 132, Laws of 1901, as amended by chapter 535, Laws of 1901, section 1; chapter 132 of the Laws of 1901, entitled "An Act to amend the tax law in relation to the

taxation of trust companies," is hereby amended so as to read as follows:

Sec. 187A. Franchise tax on trust companies.—Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company's business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the amount of its capital stock, surplus and undivided profits. Any corporation taxed under this section, for the year ending June thirtieth, nineteen hundred and one, shall be credited by the Comptroller with one-third of the amount of taxes paid by it into the state treasury under the provisions of section one hundred and eighty-two of the tax law for the year ending October thirty-first, nineteen hundred.

Chapter 132, Laws 1901, contains the following provisions—

Sec. 2. Section one hundred and eighty-nine of such chapter (908, Laws 1896), is hereby amended by adding thereto a subdivision to be subdivision seven thereof, and to read as follows:

7. Trust companies.—Every company liable to pay a tax under section one hundred and eighty-seven a of this chapter shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of business on June thirtieth preceding, separately stating the amount of its capital stock, the amount of its surplus, and the amount of its undivided profits, and containing such other data, information or matter as the comptroller may require.

Sec. 3. Section one hundred and ninety-four of such chapter (908, Laws 1896) is hereby amended to read as follows:

Sec. 194. Payment of tax and penalty for failure.—A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated or surface railroads not operated by steam, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven *a*, one hundred and eighty-seven *b* or one hundred and eighty-seven *c* shall be due and payable into the state treasury on or before the first day of September in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint stock company, person or partnership, liable to pay the tax, shall pay into the state treasury, in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such

tax shall be a lien upon and bind all the real and personal property of the corporation, joint stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

Sec. 4. Section two hundred and two of such chapter (908, Laws 1896) is hereby amended to read as follows:

Sec. 202. Exemptions from other state taxation.—The personal property of every corporation, company, association of partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, and the personal property of every corporation taxable under section one hundred and eighty-seven *a* of this article, other than for an organization tax, and as provided in chapter thirty-seven of the general laws, shall be exempt from assessment and taxation for all other purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this act shall not be taxed as an individual for such stock.

Respectfully submitted,

FRANK HARVEY FIELD,
For Plaintiffs-in-error.

JAMES MCKEEN,
For Defendants-in-error.

Supreme Court of the United States.

No. 198.—October Term, 1901.

John G. Jenkins and One Hundred and Forty other Stockholders of the First National Bank of Brooklyn, Plaintiffs in Error,
vs.
Barzillai G. Neff, President, and John Drescher, Jr., et al., Assessors, constituting the Board of Assessors of the City of Brooklyn for the Taxing Year 1897.

In error to the Supreme Court of the State of New York.

[June 2, 1902.]

This case is before us on a writ of error to the Supreme Court of the State of New York, and is brought to review a final order of that court affirming an assessment of the shares of stock in the First National Bank of Brooklyn. Under the practice prevailing in that State a writ of certiorari was issued out of the Supreme Court on August 13, 1897, on the petition of the stockholders of the First National Bank of the city of Brooklyn, now plaintiffs in error, directed to the board of assessors of the city of Brooklyn, requiring them to return all their proceedings relative to the assessment of the shares of stock of said bank. A return having been made the assessment was on October 6, 1899, confirmed, with some modifications not material to the present controversy. This order was affirmed by the Appellate Division of that court on January 9, 1900. (47 N. Y. App. Div. Sup. Ct. Rep. 394.) On appeal to the Court of Appeals the order was by that court also affirmed, (163 N. Y. 320,) and the record remitted to the Supreme Court.

Mr. Justice Brewer delivered the opinion of the Court.

The right of the State to tax these shares of stock is not denied, but the contention of plaintiffs in error rests on the applicability of that part of section 5219, Revised Statutes, which reads "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." The purpose of this legislation was thus stated in *Mercantile Bank* v. *New York*, (121 U. S. 138,155):

"A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of State laws were exempt from an equal burden. The main purpose, there-

fore, of Congress in fixing limits to State taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

The laws of New York in reference to taxation of the shares of stock in national banks are like those in respect to the taxation of shares of stock in State banks, and there are many of the latter in the State. So it is not suggested that the State makes any discrimination between State banks and national banks, but it is contended that the statutes of New York, in reference to the taxation of trust companies, are essentially different; that these trust companies are practically carrying on a banking business; that an enormous amount of moneyed capital is invested in them, and that as a result not merely a theoretical but a practical and burdensome discrimination is made against the moneyed capital invested in national banks. Commenting upon this, it was said by Mr. Justice Woodward, delivering the opinion of the Appellate Division of the Supreme Court in the case at bar:

"It is conceded on the part of the relators that the stock of the First National Bank was assessed upon the same principle applied in the assessment of the stock of the State banks doing business in their immediate vicinity, and that this was done under the provisions of section 24 of the tax law of 1896. In order to pronounce this provision of the law invalid we must, therefore, convict the legislature not alone of hostility to the national banks, but of hostility toward its own creations; we must reach the conclusion that the State of New York is seeking by an exercise of its taxing power to advance one class of moneyed corporations at the expense of another, both of which have been created by the legislature and both of which are engaged, presumptively, in promoting the interests of the people. There are no presumptions in favor of this idea, and there is no evidence in the case to show that any of the State institutions have ever complained of an inequality in taxation."

Further, in *Mercantile Bank* v. *New York, supra*, decided in 1887, the New York statutes in reference to the taxation of shares of stock of national banks were challenged on the ground of discrimination in favor of moneyed capital otherwise invested, and several instances of such investment were called to the attention of the court, among them that of trust companies, and it received, as stated in the opinion, "separate consideration." It was held that the system of taxation prevailing in respect to them was not such as to vitiate the statutory methods of taxation of the shares of stock in national banks. It must be borne in mind that for a score of years prior to that decision there had been a series of cases coming to this court from different States, principally from New York, involving statutes with reference to State taxation of national banks, and that during these years changes had been going on in the legislation of the different States in

order to conform to the rules laid down by this court in its successive opinions.

Counsel for plaintiffs in error insist that that case is not controlling, and for several reasons: One, because two amendments have been made in the legislation of New York, which it is said give full banking powers to trust companies, save in respect to the power of issuing circulating notes. The first is found in chap. 696, Laws of 1893, which added an eleventh subdivision to section 156 of the banking law (chap. 689, Laws 1892), and which in terms authorizes trust companies: "11. To exercise the powers conferred on individual banks and bankers by section 55 of this act, subject to the restrictions contained in said section."

Section 55, referred to, provides:

"Every bank and individual banker doing business in this State may take, receive, reserve and charge on every loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at the rate of six per cent per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has run."

This legislation simply places trust companies on an equality with banks, whether corporate or individual, in respect to the matter of interest, and does not give to trust companies power to loan, discount or purchase paper. Whatever powers trust companies had in respect to these matters were given by statutes which were in existence before the decision in *Mercantile Bank* v. *New York*. That which was in the mind of the legislature was evidently equality in respect to interest and usury. The doctrine that legislative recognition is equivalent to legislative grant is not pertinent. In order to come within the scope of that doctrine there should be in the language a clear recognition of a corporate entity or corporate power actually existing or claimed to exist. A grant of corporate life or corporate power is not made by implication, and the same rule obtains in respect to the matter of recognition. If the language of the legislature is satisfied, has full scope and effect, without reading into it either a grant or a recognition of corporate life or power, neither will be implied. And here so clear is it that the legislature was not contemplating the grant or recognition of any hitherto unauthorized power to loan, discount or purchase paper, but had simply the thought of giving equality in the matter of interest and usury, that it is inadmissible to hold that thereby an additional power, either of loan or discount or purchase, was given to trust companies.

The other change in the legislation referred to is found in section 163 of chapter 689 of the Laws of 1892, which provides that "every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter, and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered company." But this gives no new

powers to trust companies generally, but simply grants to such companies, incorporated under special laws, the powers of trust companies incorporated under the general statute, and subjects them to the same restrictions, unless inconsistent with their special charters. Clearly, there has been no change in the legislation of New York in respect to the powers of trust companies which calls for any limitation of the decision in *Mercantile Bank* v. *New York.*

Again, it is insisted that that case was submitted on an agreed statement of facts which neglected to disclose fully the manner in which trust companies carried on their business, and also that whatever might have been the facts at that time the testimony here presented shows that almost the entire volume of the business of the trust companies is banking, pure and simple, and but a small fraction of it is the peculiar and ordinary business of trust companies; but that decision rested mainly upon the powers granted by the statutes of New York to trust companies, and it was held that, tested by such powers, they were not in any proper sense of the term banking institutions.

Further, although there is in the record quite an amount of testimony as to the assets and business of trust companies in Brooklyn, yet the case was determined by the Supreme and Appellate Courts of New York upon findings of fact—which findings do not sustain the contention of plaintiffs in error in this respect—and it is well settled that the findings of fact in the State courts are on a writ of error conclusive with us. (*Hedrick* v. *Atchison, Topeka &c. Railroad*, 167 U. S. 673, 677, and cases cited therein; *Bement* v. *National Harrow Co.*, *ante*, p. ——.) In other words, we apply the law to the facts settled in the State courts, and we do not search the record to see if there be not disclosed by the testimony some other matters not embraced in the findings which may affect the conclusion.

Still, again, even if we were to pass beyond the findings of fact and, searching the record, should be of the opinion that the testimony justified the contention of the plaintiffs in error that trust companies are mainly using their funds in the carrying on of a purely banking business—and this under an assumption of powers not in fact bestowed by the legislation of the State—what effect would such conclusion have upon the question before us? It is to be presumed that if trust or other companies are exercising powers not conferred by law the State will take the proper steps to keep them within their statutory limits, and a neglect for a limited time to do so cannot be considered as an assent by the State to such an improper assumption of power. It is not to be assumed that the State is acting in bad faith; that it has so legislated that upon the face of the statutes a uniform rate of taxation upon all moneyed capital is provided, while at the same time it has designedly placed the grants of some corporate franchises in such form as to permit the use of moneyed capital in

certain ways with peculiar and less stringent rates of taxation. Certainly there is nothing in this case to indicate any want of good faith on the part of the State of New York. Whatever may have been the practices of trust companies, however much they may in fact have used their funds in a strictly banking business, there is no suspicion of a purpose on the part of the State to discriminate against national banks by permitting trust companies to do a banking business without being subject to the same rate of taxation that is enforced against moneyed capital invested in such banks. Counsel for plaintiffs in error notice several reports of the commissioners of taxes and assessments of the city of New York for years following the commencement of this suit in respect to the relative taxation of banks and trust companies, and it was stated on the argument that, as a consequence perhaps of these reports, legislation has been had with a view of correcting any supposed discrimination.

In reference to some other suggested differences between banks and trust companies in respect to the matter of taxation we make a further extract from the opinion of Mr. Justice Woodward, which in general we approve:

"It may not, in view of the importance of this question, be out of place to suggest that the statute under which the trust companies are organized does not compel the capital to be invested in United States bonds; it may be invested in 'bonds and mortgages on unincumbered real property in this State worth at least double the amount loaned thereon, or in the stocks or bonds of this State, or of the United States, or of any county or incorporated city of this State duly authorized by law to be issued.' (The Banking Law, Laws of 1892, chap. 689, sec. 159.) If the capital of the trust companies should be invested in bonds and mortgages, or other securities not exempt from taxation, there would be no inequality in the premises; and as they are not allowed the privilege of issuing notes to be circulated as money upon the security of their United States bonds, which is the real justification for the taxation which is assessed upon the shareholders of the national banks, we fail to find in the record any evidence of such a discrimination against the national banks as would justify us in holding that the law under which the trust companies operate, and the statutes under which they are taxed, can have the effect of invalidating an otherwise valid statute. The fact that in a given instance, by reason of an exercise of a discretion as to the particular kind of securities purchased, a trust company may have a real or imaginary advantage over investors in the shares of a national bank is not a sufficient foundation for declaring an assessment invalid. It is essential, if the law of the State is to be declared invalid under the limitations expressed in the United States statute, that the enactment of the legislature shall evidence a disposition to evade or override the spirit of the limiting statute; and this is clearly not the case where it provides for equal taxation upon its own State banks, and where it does not require its trust companies, which, it may be conceded, come into a limited competition with the investors in the shares of national banks, to invest their capital in such a way as to necessarily exempt them from taxation upon a portion of their capital stock. If the State refused to allow its trust companies to invest in United States secu-

rities there might be a far greater cause for grievance. Trust companies are not organized primarily for banking purposes; they are designed for other purposes, as pointed out in the Mercantile Bank case, and it was never the purpose of the Federal government to interfere with the policy of the State in reference to the formation and development of such corporations as it should judge expedient, even though it should be found necessary to invest them with some of the powers of banking associations as an inducement to perform the other duties and obligations imposed by the State. As was said in the Mercantile Bank case in reference to savings banks, 'however large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation.'"

While we have not discussed all the questions raised by counsel in their elaborate brief and argument, we have sufficiently indicated our views upon the general questions involved in the case, and, finding no error, the judgment of the Supreme Court of the State of New York is

Affirmed.

Mr. Justice GRAY did not hear the argument and took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.